



County of Erie

MARK C. POLONCARZ
COMPTROLLER

January 26, 2007

Hon. Timothy B. Howard
Erie County Sheriff
10 Delaware Avenue
Buffalo, New York 14202

Honorable Members
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Review of City of Buffalo Cellblock Agreement with County of Erie

Dear Sheriff Howard and Honorable Members:

The Erie County Comptroller's Office ("Office") has completed a review of the agreement between the City of Buffalo ("City") and Erie County ("County") dated July 1, 2003 (the "Agreement"), a copy of which is attached herewith as Exhibit "A," transferring the detention of pre-arraigned arrestees from the City to the County's Holding Center.

The objectives of our review were to determine: (1) whether the County has satisfied its responsibilities as outlined in the Agreement; (2) whether the City has satisfied its responsibilities as outlined in the Agreement; (3) the County's cost for maintaining the City cellblock detainee function; and (4) whether the County's costs exceed the City's annual payment.

BACKGROUND

In 2001, County Executive Joel A. Giambra commenced discussions with City officials concerning the possibility of a countywide police agency. These discussions included whether the County might assume the City's responsibilities for booking and detaining pre-arraigned arrestees from the City at the County's Holding Center, thus enabling the City to close its aging cellblock facility at Buffalo Police Headquarters at 74 Franklin Street. The County already assumed responsibilities for the detention of female arrestees from the City several years earlier. These discussions also followed the January 2001 report of the Buffalo Niagara Partnership's "Who Does What?" Commission, which recommended that the City cellblock be closed and the County assume those detention responsibilities.

The premise behind these discussions was that the City's cellblock was duplicative of the County's Holding Center, that the cellblock was aging and in need of significant capital infrastructure improvements that the City could not easily afford, that the County's daily cost per prisoner was significantly lower than the City's, and that the County's assumption of detention

and booking responsibilities could save the City hundreds of thousands of dollars annually while the County's costs would be covered by a City annual payment.

With the support of the Erie County Sheriff and Buffalo Police Commissioner, and following the approvals of the County Executive, Buffalo Mayor, Buffalo Common Council, and the Erie County Legislature (Comm. 11E-44, approved June 19, 2003), the City and Erie County entered into the Agreement whereby the City closed the cellblock and transferred all detention and booking functions to the responsibility of the Erie County Sheriff's Office and the Erie County Holding Center. The Buffalo cellblock closed on Sunday, August 31, 2003.

GENERAL TERMS AND CONDITIONS OF THE AGREEMENT

Under the Agreement (enclosed), the County agreed to:¹

- Provide certain booking functions such as fingerprinting and mug shots;
- Provide secure detention facilities, including guards;
- Receive arrestees from the City;
- Secure the detention of arrestees until their arraignment;
- Provide transportation of arrestees from the detention facility to the respective courts;
- Secure the arrestees in the courts throughout the arraignment process;
- Attend to the basic medical needs of the arrestees after they have been accepted into the Sheriff's custody;
- Permit the City (or other arresting agencies) to access the detention facility for investigative or other purposes; and
- Provide for the release of arrestees into the custody of the City or other arresting agencies.

The Agreement also specifies that "Detention Services do NOT include the transportation of Arrestees between the CITY's facilities and the Detention Facility, the creation of arrest or other reports, or the interrogation, investigation or prosecution of the Arrestee."²

The Agreement states that the City shall provide necessary medical attention to the Arrestee and if necessary, transport the Arrestee to and from appropriate hospitals, if one or more of the following conditions exist:

- The Arrestee is sick, ill or injured;
- The Arrestee is mentally ill;
- The Arrestee's ability is impaired by alcohol or drugs to the extent that he is unconscious or semi-conscious or he poses a danger to himself or others; or
- The Arrestee ingested or is suspected of having ingested any foreign object or substance.³

¹ Agreement, § (2)(A).

² Agreement, § (2)(B).

³ Agreement, § (3)(A).

The Sheriff's Office also reserves the "right to refuse to perform Detention Services for any Arrestee if the Sheriff, in its sole discretion, determines that one or more of the above-referenced conditions has not been alleviated upon the Sheriff's receipt of the Arrestee from the CITY."⁴

Under the Agreement, the City's uniformed cellblock attendants and senior cellblock attendants were eligible to transfer to County employment as Sheriff Deputy-Officers in the Holding Center. The Legislature's approval of the Agreement (Comm. 11E-44) authorized the Sheriff to create eighteen (18) new Sheriff Deputy-Officer positions for the Buffalo Lock-Up Security cost center to facilitate these transfers. We note that eleven (11) Buffalo personnel transferred to the County, and that for the period December 24, 2005 to December 22, 2006, twenty (20) Deputy Sheriff-Officer positions and one (1) Report Technician (Sheriff) 55A position were filled in the Buffalo Lock-Up Security cost center.

In return for providing detention services to the City, the City is required to pay the County \$936,794 annually, payable in equal quarterly installments of \$234,198.50, due on January 1, April 1, July 1 and October 1 of each calendar year.⁵ As stated in the Agreement:

Should the CITY fail to make one or more Quarterly Payments to the COUNTY, the County may, at its sole discretion, terminate this Agreement pursuant to the terms contained herein. Upon termination, the CITY shall be solely responsible for obtaining Detention Services elsewhere.⁶

Though the above section seems to grant the County the right to immediately terminate the Agreement upon the City's failure to pay, the Agreement does provide that upon the default of any party, the non-defaulting party (the County) may provide the defaulting party (the City) with a written notice of default, and if the City does not cure the default within thirty (30) days of their receipt of said notice, the County may terminate the Agreement upon an additional thirty (30) days written notice to the City.⁷

Nothing in the Agreement requires the County to invoice the City for these payments, nor should there be an invoice required as these are installment payments due on a certain date pursuant to the terms of the Agreement. Notwithstanding the forgoing, the County has sent invoices to the City as a convenience to remind the City of the payments.

Please be advised that as of January 26, 2007, the City has not made either its October 1, 2006, nor its January 1, 2007 payments to the County, but has pledged to do so following a written request from this Office dated January 8, 2007. Despite frequent late quarterly payments

⁴ Agreement, § (3)(B).

⁵ Agreement, § (5).

⁶ Agreement, § (8).

⁷ Agreement, § (1)(B).

by the City, it is our understanding that neither the County Executive, Sheriff, nor County Attorney have served any notice of default on the City.

TERM OF AGREEMENT

The agreement is for an initial five (5) year term, expiring June 30, 2008, and shall automatically renew for four (4) additional five (5) year terms, unless either party provides two (2) year's written notice of non-renewal to the other.⁸ In other words, because neither party provided the other a notice of non-renewal by June 30, 2006, it could be argued that the Agreement has been renewed for at least one (1) additional term. If it has been extended, then the Agreement will remain in effect until June 13, 2013.

RENEGOTIATION OF PAYMENTS

At the end of 2006, and every third year thereafter, the County and the City shall review the expenses and revenues associated with the Agreement and can negotiate an increase or decrease in the amount of the annual payment to take effect in the following July 1 quarterly payment.⁹

According to the Agreement, any review to determine any adjustments in the annual payment by the City:

shall consider, among other factors, additional capital improvements made by the COUNTY to the Detention Facility, increases or decreases in personnel and operating costs of the Detention Facility, the number of Arrestees from the City and Other Arresting Agencies that are serviced by the Detention Facility and the fiscal impact of changes in laws and regulations relating to the operation of the Detention Facility.¹⁰

If the County and the City do not come to an agreement concerning an increase, the payment automatically follows the cumulative Buffalo Area Consumer Price Index for the previous three years, subject to a 7.5% cap.¹¹ As per the Agreement, any change in the amount of the quarterly payments will not take effect until the July 1, 2007 payment.

⁸ Agreement, § (1)(A).

⁹ Agreement, § (6)(A).

¹⁰ *Id.*

¹¹ Agreement, § (6)(C). The Buffalo Area Consumer Price Index is no longer published by the U.S. Department of Labor. Using the Consumer Price Index for Northeast Urban Consumers as a replacement, the index increased from 200.2 to 215.0 from 2004 to 2006, resulting in a 7.4% increase over three years (see U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers Series ID CUUR0100SA0 Northeast Urban, Not Seasonally Adjusted).

It is our Office's understanding that since the end of 2006 the County and City have not reviewed the expenses and revenues associated with the Agreement or negotiated an increase or decrease in the amount of the annual payment.

COUNTY AND CITY PERFORMANCE OF TASKS

This Office's recent audit of operations at the County Holding Center finds that the Sheriff's Office was performing the tasks as listed in the Agreement in an acceptable fashion. We are also unaware of any City concerns or allegations of any County violation of the Agreement.

ACTUAL COUNTY COSTS – 2003-2006

As previously noted, our Office recently completed an audit of operations at the County's Holding Center. The audit reviewed, among other issues, the County's costs to operate the facility, including personnel expense. While not specifically mentioned in the audit, our Office reviewed costs for the Buffalo Lock-Up Security cost center. Table 1 below describes the County's costs for the past forty (40) months:

Table 1:

Buffalo Lock-Up Cost Center Cost Schedule

	<u>2003¹</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Deputy (job group 8, step 2)	\$40,315	\$42,372	\$44,441	\$46,494
Overtime shift, etc.	4,838	10,477	12,557	13,749 ⁽⁴⁾
Lineup pay	<u>0</u>	<u>978</u>	<u>1,652</u>	<u>1,717</u> ⁽⁴⁾
Subtotal - Personnel Costs	\$45,153	\$53,827	\$58,650	\$61,960
Fringes ²	\$13,546	\$20,993	\$29,325	\$30,980
Uniform Allowance	<u>1,000</u>	<u>750</u>	<u>750</u>	<u>750</u>
Total Deputy Cost	\$59,699	\$75,570	\$88,725	\$93,690
Total # of Deputy Positions	18	19	18	20
Total Cost of Positions	\$1,074,582	\$1,435,830	\$1,597,050	\$1,873,800
Ancillary Costs ³	21,895	22,442	22,990	23,537
Total County Costs	\$1,096,477	\$1,458,272	\$1,620,040	\$1,897,337
Reimbursement from Others ³	159,681	163,673	167,665	171,657
Net Cost to the County	\$936,796	\$1,294,599	\$1,452,375	\$1,725,680
Current Reimbursement from the City		<u>936,796</u>	<u>936,796</u>	<u>936,796</u>
Net Loss to County (Annually)		\$357,803	\$515,579	\$788,884
TOTAL LOSS TO COUNTY (3 YEAR PERIOD)				<u>\$1,662,266</u>

(1) 2003 figures are from a spreadsheet prepared by Division of Budget, Management and Finance

(2) Fringes - 30% in 2003; 39% in 2004; 50% in 2005 and 2006

(3) Figures increased 2.5% each year from the original 2003 figure

(4) Overtime and Lineup costs are actual figures from SAP for the Buffalo Lockup Security Cost Center divided by the number of guards assigned.

This review finds that the County's costs under the Agreement exceeded the City's payments by \$1,662,266 during the first forty (40) months of the Agreement (September 1, 2003 - December 31, 2006).

POTENTIAL FUTURE LOSSES – 2007-2013

Given the above-mentioned County losses to date, this Office calculated the potential losses to the County for the Buffalo Lockup Security function through June 30, 2013, absent any change in the current City payment. We used two methods to calculate potential future losses in this area. Under the first method, we used the current annual rate of inflation. Under the second method, we used average actual losses.

Using the inflation calculation, we took the Consumer Price Index for Northeast Urban consumers as published by the U.S. Department of Labor, Bureau of Labor Statistics and determined that over the past three years, it increased on average about 2.3% per year. Using the County's 2006 loss of \$788,884, we multiplied that loss by 2.3% each year for the remaining six and one half years of the contract (the last year of the contract would have only two payments). Under that calculation, we have determined that the County would lose \$5,591,783 between 2007 and 2013 (see Exhibit "B," attached herewith).

Using the average actual losses for 2003-2006, we determined that the County's costs exceeded the City's reimbursement by more than \$157,000 between 2004 and 2005, and by more than \$273,000 between 2005 and 2006. The average of these two figures is \$215,000 (rounded). Accordingly, if the County's costs above the City's current payment continue to increase by \$215,000 annually to 2013, the County's total loss over those six and one half years would be \$10,395,246 (see Exhibit "C," attached herewith).

At this rate, absent any renegotiation of the payments, we believe that the County can expect to lose an additional \$5,591,783 million by June 30, 2013 and potentially as much as \$10,395,246.

Our review demonstrates that the County's operation of the Buffalo Lock-Up Security cost center and provision of ancillary functions for the City has significantly negatively impacted the County's General Fund. The City's payments to the County – which are routinely late, a violation of the terms of the Agreement and grounds for termination if the County is so inclined – are outpaced by the costs of the Buffalo Lock-Up Security function.

WE RECOMMEND that the appropriate County officials, including the Sheriff and Director of Budget, Management and Finance, review our findings to confirm the County's actual costs and establish the County's "official" escalation adjustment for the Buffalo Lock-Up Security function in the Holding Center.

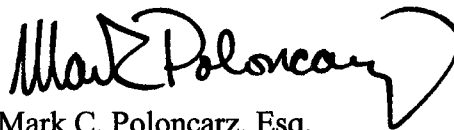
WE FURTHER RECOMMEND that under the terms of the Agreement, the County should immediately commence negotiations with the City to increase the City's payment under this Agreement to fully reimburse the County for its annual cost of services provided under the Agreement. The County's costs have increased significantly since the Agreement was signed in July 2003 and such costs must be passed on to the City.

We note that some question exists as to whom should perform the negotiation on behalf of the County. The original Agreement was negotiated by the County Executive's Office. When this Office inquired, the Erie County Law Department stated their belief that the Erie County Sheriff's Office should initiate negotiations with the City. To the contrary, the Sheriff's Office stated their belief that the Law Department should or would engage in negotiations. Because the Sheriff's Office is governed by an independently elected official, **WE RECOMMEND** that the Sheriff immediately begin such negotiations with the City and notify the County Executive's Office on the status of negotiations.

WE ALSO RECOMMEND that should the City desire to fall back on the 7.5% cumulative CPI increase cap, the County should take a hard stance and inform the City that the contract will terminate on June 30, 2013, unless the City agrees to a more realistic increase commensurate with the County's actual costs.

My office is available to assist the Sheriff's Office, Department of Law, and Division of Budget, Management and Finance and to answer any questions you have in this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mark Poloncarz", with a large, stylized flourish at the end.

Mark C. Poloncarz, Esq.
Erie County Comptroller

cc: Hon. Joel A. Giambra, Erie County Executive
Hon. Byron W. Brown, Mayor, City of Buffalo
Hon. Andrew A. SanFilippo, Comptroller, City of Buffalo
Mr. James M. Hartman, Director, Div. of Budget, Management and Finance
Mr. Laurence K. Rubin, Esq., County Attorney
Erie County Fiscal Stability Authority

EXHIBIT A

Agreement between the City of Buffalo and County of Erie Transferring the Detention of Pre-Arraigned Arrestees from the City of Buffalo to the County of Erie

AGREEMENT

Transferring the detention of pre-arraigned arrestees from the City of Buffalo to the County of Erie

THIS AGREEMENT made as of the 1st day of July, 2003, by and between the COUNTY OF ERIE, a municipal corporation of the State of New York, having its principal office at 95 Franklin Street, Buffalo, New York 14202 (hereinafter the "COUNTY", and the CITY OF BUFFALO, a municipal corporation of the State of New York, having its principal office at City Hall, Niagara Square, Buffalo, New York 14202 (hereinafter the "CITY").

WHEREAS, the COUNTY, through the Erie County Sheriff's Office (hereinafter "Sheriff"), operates the Erie County Holding Center (hereinafter "Holding Center") and the Erie County Correctional Facility (hereinafter "Correctional Facility"); and

WHEREAS, the Holding Center and the Correctional Facility are used for detaining both the Sheriff's pre-arraigned arrestees and, by agreement with the CITY dating to 1983, pre-arraigned females arrested in the City of Buffalo (pre-arraigned arrestees shall hereinafter be known as "Arrestees"); and

WHEREAS, for as long as the CITY's female Arrestees have been detained by the Sheriff in the Holding Center and the Correctional Facility, there has been no need for a CITY cellblock for female Arrestees; and

WHEREAS, the CITY and the COUNTY now desire to eliminate the duplication of services between the municipalities relating to the detention of Arrestees by having all of the CITY's Arrestees detained by the Sheriff at the Holding Center and/or Correctional Facility; and

WHEREAS, it is expected that an arrangement whereby the Sheriff detains all of the CITY's Arrestees will result in fiscal and other benefits for both the COUNTY and the CITY; and

WHEREAS, such an arrangement would eliminate the need for the CITY to own, operate and maintain a cellblock; and

WHEREAS, in Chapter 213 of the Laws of 2002, the New York Legislature amended Correction Law Sections 500-a and 500-c to permit the Holding Center and the Correctional Facility to be used for the detention of Arrestees from the CITY and elsewhere; and

WHEREAS, it is hoped that if such a detention arrangement is successful, the CITY and the COUNTY will enter into additional cooperative arrangements that will

eliminate duplication of services, reduce costs and increase the effectiveness and efficiency of other municipal services.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the COUNTY and the CITY agree as follows:

1. Term, Expiration, Termination and Renewal.

A. The term of this Agreement shall be five (5) years, commencing July 1, 2003 and expiring on June 30, 2008, unless this agreement shall be terminated beforehand pursuant to the termination provisions set forth herein. This Agreement shall automatically renew for four (4) additional five (5) year terms, unless either Party who does not desire to renew the Agreement provides two (2) year's written notice of non-renewal to the other Party prior to the expiration of each term.

B. If one Party shall default on any of its obligations pursuant to this Agreement, the non-defaulting Party may provide the defaulting Party with written notice of the default. If the defaulting Party does not cure the default or undertake good faith efforts to cure the default within thirty (30) days of receipt of the written notice of default, the non-defaulting party may terminate this Agreement upon an additional thirty (30) days written notice to the defaulting party. The defaulting party shall be liable to the non-defaulting party for any damages relating to the default.

C. Three (3) years prior to the expiration of the fifth and final five (5) year term of this Agreement, the Parties shall commence the process of determining whether the renewal of this Agreement for additional terms is necessary and upon what terms and conditions this Agreement shall be renewed.

2. Sheriff's Detention of CITY Arrestees.

A. The COUNTY, through the Sheriff, shall provide detention services ("Detention Services") for all male and female Arrestees of the CITY. "Detention Services" shall include, but not be limited to: (a) certain booking functions such as fingerprinting and mug shots, checking the arrest history of Arrestees, screening the Arrestees for medical and psychological history and risk assessment of Arrestees; (b) providing a secure detention facility or facilities ("Detention Facility"), including provision for guards and other personnel and the rendering of heat, electricity and water to the Detention Facility; (c) performing maintenance and capital improvements on the Detention Facility; (d) receiving Arrestees from the CITY or from Other Arresting Agencies (as hereinafter defined); (e) the secure detention of Arrestees until their arraignment; (f) transporting Arrestees from the Detention Facility to the respective courts and within court buildings through completion of the arraignment; (g) securing the presence of Arrestees in the respective courts through completion of their arraignment; (h) attending to the basic medical needs of the Arrestees after the Arrestees are accepted into the Sheriff's custody; (i) permitting the CITY or the Other Arresting Agencies access to the Detention Facility

for investigative and other purposes; and (j) the release of Arrestees into the custody of the CITY or the Other Arresting Agencies.

B. Detention Services do NOT include the transportation of Arrestees between the CITY's facilities and the Detention Facility, the creation of arrest or other reports, or the interrogation, investigation or prosecution of the Arrestee.

3. Medical treatment of Arrestees prior to Detention.

A. Prior to the Sheriff's acceptance of the Arrestee into the Sheriff's custody, the CITY shall provide necessary medical attention to the Arrestee and if necessary, transport the Arrestee to and from appropriate hospitals, if one or more of the following conditions exist:

- a. The Arrestee is sick, ill or injured.
- b. The Arrestee is mentally ill.
- c. The Arrestee's ability is impaired by alcohol or drugs to the extent that he is unconscious or semi-conscious or he poses a danger to himself or others.
- d. The Arrestee ingested or is suspected of having ingested any foreign object or substance.

B. The Sheriff reserves its right to refuse to perform Detention Services for any Arrestee if the Sheriff, in its sole discretion, determines that one or more of the above-referenced conditions has not been alleviated upon the Sheriff's receipt of the Arrestee from the CITY. The Sheriff may require the CITY to provide proof of medical treatment upon the Arrestee, including but not limited to a letter or report of a treating physician, prior to the Sheriff's acceptance of the Arrestee.

4. Transfer of CITY property to COUNTY.

On the Implementation Date (as hereinafter defined) of this Agreement, the COUNTY shall purchase for \$1.00, and the CITY shall sell to the COUNTY, one 1999 Ford prisoner transport van, VIN# 1FDXE40F5XHB12800 ("Van"). All registration, warranties, manuals and other documents relating to the ownership of the Van shall also be transferred from the CITY to the COUNTY at this time. The CITY shall also deliver to the COUNTY a bill of sale for the Van. The COUNTY accepts the Van in "as-is" condition.

5. Costs and Revenues

In return for providing Detention Services to the CITY, the CITY shall pay to the COUNTY the initial annual sum of \$936,794 ("Annual Payment"). payable in equal quarterly installments of \$234,198.50. The first installment shall be due on or before July 1, 2003 and the second installment shall be due on or before October 1, 2003. Thereafter, installments shall be due on or before January 1 ("First Quarterly Payment"). April 1

("Second Quarterly Payment"), July 1 ("Third Quarterly Payment") and October 1 ("Fourth Quarterly Payment") of each calendar year.

6. Escalation Clause

A. The amount of the Quarterly Payments shall remain stable until July 1, 2007. At the end of the third full calendar year of the Agreement (2006), and at the end of every third calendar year thereafter, the COUNTY and the CITY shall review the expenses and revenues associated with this Agreement and negotiate an increase or decrease (if any) in the Annual Payment (such an increase or decrease shall be known as an "Adjustment"). The review (hereinafter "Review") shall consider, among other factors, additional capital improvements made by the COUNTY to the Detention Facility, increases or decreases in personnel and operating costs of the Detention Facility, the number of Arrestees from the CITY and Other Arresting Agencies that are serviced by the Detention Facility, and the fiscal impact of changes in laws and regulations relating to the operation of the Detention Facility. The Adjustment shall be factored into the Annual Payment (hereinafter "Adjusted Annual Payment"), and the first Adjusted quarterly payment (hereinafter "Adjusted Quarterly Payment") shall be due at the Third Quarterly Payment following each Review (i.e. July 1, 2007, July 1, 2010, July 1, 2013, etc.).

B. During each Review, the CITY Comptroller, or other fiscal officer as may be designated by the CITY, shall have the right to audit the finances of the Detention Facility, pursuant to Paragraph "9" below, for the purpose of calculating the appropriate Adjustment.

C. The CITY and the COUNTY shall make a concerted, good faith effort to arrive at an appropriate Adjustment during each Review. However, if the COUNTY and the CITY cannot agree upon an Adjustment before the due date of the Third Quarterly Payment following each Review, the Annual Payment will be increased for the next three years by the lesser of: (1) the cumulative increase in the Buffalo Area Consumer Price Index ("CPI") for the previous three years; or 7.5%, constituting an average of 2.5% per year for the previous three years. The first Adjusted Quarterly Payment will be payable beginning with the Third Quarterly Payment following each Review.

EXAMPLE: In the fourth quarter of the third full calendar year (2006) of the Agreement, the Parties shall commence the Review process. If they cannot agree upon an Adjustment before the Third Quarterly Payment in the fourth full calendar year of the Agreement (July 1, 2007), increases in the CPI for 2004, 2005 and 2006 will be used for determining the Adjustment. If the CPI in 2004 was 2%, in 2005 it was 3%, and in 2006 it was 2%, the Adjustment would be 7% of the Annual Payment, or \$65,575.58, and the Adjusted Annual Payment will be \$1,002,369.58 (\$936,794 + \$65,575.58). The Adjusted Quarterly Payment would therefore be \$250,592.40 (\$1,002,369.58 ÷ 4 annual payments). The first payment based upon this Adjusted Annual Payment will be due at the Third Quarterly Payment (July 1, 2007). Every three years thereafter (July 1, 2010, July 1, 2013, etc.) the Adjusted Quarterly Payments will be altered to reflect changes in the Adjusted Annual Payment. If, however, the cumulative CPI for the three previous

years total more than 7.5%, then the Annual Payment will increase by no more than 7.5%, or \$70,259.55, for an Adjusted Annual Payment of \$1,007,053.55

7. Detention Services for Other Arresting Agencies.

The CITY represents that it currently performs Detention Services for the City of Buffalo Police Department and for other law enforcement agencies that make arrests in the City of Buffalo (hereinafter "Other Arresting Agencies"). The COUNTY shall hereinafter offer Detention Services for these Other Arresting Agencies and shall execute separate agreements with them on such terms and conditions as the COUNTY and the Other Arresting Agencies shall agree upon. The Annual Payment from the CITY to the COUNTY is based solely upon the Detention Services that shall be performed by the Sheriff for Arrestees from the City of Buffalo Police Department.

8. Failure to Make Payments.

Should the CITY fail to make one or more Quarterly Payments to the COUNTY, the COUNTY may, at its sole discretion, terminate this Agreement pursuant to the terms contained herein. Upon termination, the CITY shall be solely responsible for obtaining Detention Services elsewhere.

9. Audit.

The COUNTY, upon reasonable notice from the CITY, shall make available to the CITY such books, papers and other items which evidence the COUNTY's revenues and expenses relating to providing Detention Services to the CITY.

10. Personnel.

A. Cellblock Attendants and Senior Cellblock Attendants employed by the CITY shall be eligible for transfer to the COUNTY and the Sheriff, as co-employers, pursuant to Civil Service Law Section 70. Upon the Implementation Date of the transfer, as hereinafter defined, said CITY employees shall be subject to the terms of the applicable collective bargaining agreement in the Sheriff's Office. The CITY agrees to provide health insurance coverage for said transferred Cellblock Attendants and Senior Cellblock Attendants for a maximum of six (6) weeks after the Implementation Date.

B. At least thirty (30) days prior to the Implementation Date of this Agreement, the City shall provide Local 264 AFSCME and the County with the names of the employees who are to be laid off as a result of this Agreement.

11. Regulatory Compliance.

The COUNTY and the CITY shall cooperate with one another throughout the performance of this Agreement in order to comply with federal, State or municipal laws and regulations pertaining to the operation of the Detention Facility, including, but not

limited to, compliance with the regulations and directives of the New York State Department of Corrections and other agencies.

12. Capital Improvements.

The COUNTY reserves its right to make any and all capital and other improvements to the Detention Facility and ancillary facilities as it deems necessary without the consultation of or approval by the CITY.

13. Insurance.

The COUNTY and the CITY each have their own program of risk management self-insurance for general liability, automobile liability, medical malpractice and workers compensation coverage. Such self-insurance coverage shall cover the COUNTY's and the CITY's respective activities with regard to the operation of the Detention Facility. In the event one of the Parties purchases an insurance policy or policies covering its respective activities and obligations regarding the operation of the Detention Facility, the party purchasing the insurance shall so notify the other Party in writing no later than ten (10) days after the effective date of the insurance policy(ies) and shall name the other Party as an additional insured on the policy(ies).

14. Legislative Authority.

In addition to the authority provided by the State Legislature, as set forth above, for the Parties to enter into this Agreement, authority to enter into this Agreement has been specifically granted to the COUNTY by a resolution adopted by the Erie County Legislature on June 19, 2003 (Reference: Comm. 11E-44); and authority to enter into this Agreement has been specifically granted to the CITY by a resolution adopted by the City of Buffalo Common Council on June 24, 2003 (Reference: 104-CCP).

15. Effective Date / Implementation Date.

The effective date ("Effective Date") is the latter date of execution of this Agreement by either the COUNTY or the CITY. The implementation date ("Implementation Date") of this Agreement is July 1, 2003.

16. Executory Provision.

The COUNTY and CITY specifically agree that this Agreement shall be deemed executory only to the extent of the monies available and appropriated to the COUNTY and CITY, respectively, for the purpose of this Agreement and that no liability shall be incurred by the COUNTY or CITY beyond the amount of such monies available.

17. Notices

Any notice required or permitted to be given hereunder shall be in writing and deemed to have been properly given when personally delivered or deposited in the United States mail, postage prepaid, certified or express mail, return receipt requested, addressed to COUNTY or CITY, as the case may be. as follows:

If to COUNTY:
Erie County Executive
95 Franklin Street
Buffalo, New York 14202

If to CITY:
Mayor - City of Buffalo
201 City Hall, 65 Niagara Square
Buffalo, NY 14202

With a copy to:
Erie County Department of Law
69 Delaware Avenue, Suite 300
Buffalo, New York 14202

City of Buffalo, Department of Law
1100 City Hall, 65 Niagara Square
Buffalo, NY 14202

Each Party may designate other addresses for receipt of notices upon written notice to the other Party.

18. Assignment, Successors and Assigns.

This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the COUNTY and the CITY respectively and their successors, assigns and representatives. Neither the COUNTY nor the CITY shall have the right to assign, transfer or sublet its interests or obligations hereunder without the written consent of the other Party.

19. Indemnification.

Each Party agrees to defend, indemnify and hold harmless the other Party and its agents, employees and representatives, against all claims, losses, damages, injuries or other disputes which result directly or indirectly from the services provided by each respective Party pursuant to this Agreement.

20. Scope of Agreement.

This Agreement constitutes the entire agreement and understanding between the Parties hereto, and it is agreed that any change in, addition to, amendment or modification of the terms hereof shall be of no effect unless reduced to writing and executed by both parties hereto.

21. Separability Clause.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

22. New York Law Applies.

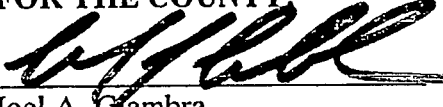
This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

23. Execution in Counterparts.


This Agreement may be signed in counterparts.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

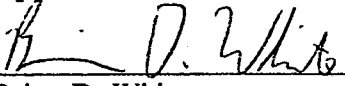
FOR THE COUNTY:


Joel A. Giambra
Erie County Executive *By* Carl J. Calabrese,
Deputy CE

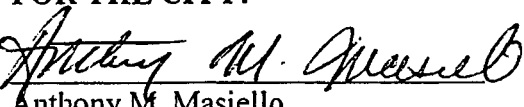
Approved as to Content:


Patrick M. Gallivan
Erie County Sheriff

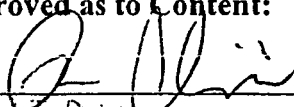
Approved as to Form:


Brian D. White
Assistant County Attorney
Document No. 03-1299-6P

FOR THE CITY:


Anthony M. Masiello
Mayor—City of Buffalo

Approved as to Content:


Robert G. Diino
Commissioner of Police, Buffalo

Approved as to Form:

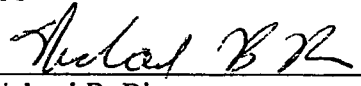

Michael B. Risan
City of Buffalo Corporation Counsel

EXHIBIT B

Projected Loss in Buffalo Lockup Security Function 2007-2013

**If the loss grows at the current rate of inflation (2.3% annually)
(based on 2006 actual loss of \$788,884)**

Year	Projected Loss
2007	\$ 807,028
2008	825,590
2009	844,579
2010	864,004
2011	883,876
2012	904,205
2013	<u>462,501</u>
Total	<u>\$ 5,591,783</u>

EXHIBIT C

Projected Loss in Buffalo Lockup Security Function 2007-2013

**If the loss grows at the rate of \$215,000 annually
(based on 2006 actual loss of \$788,884)**

Year	Projected Loss
2007	\$1,003,884
2008	1,218,884
2009	1,433,884
2010	1,648,884
2011	1,863,884
2012	2,078,884
2013	<u>1,146,942</u>
Total	<u>\$10,395,246</u>