

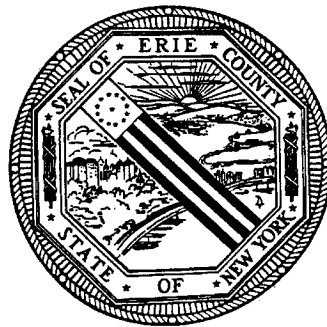
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**REPORT TO THE ERIE COUNTY LEGISLATURE  
92 FRANKLIN STREET  
BUFFALO, NEW YORK 14202**

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**AUGUST 2006**

**AUDIT OF THE  
CITY OF BUFFALO PARKS AGREEMENTS**



**MARK C. POLONCARZ  
ERIE COUNTY COMPTROLLER**

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**Michael R. Szukala  
Deputy Comptroller - Audit & Control**

**ERIE COUNTY  
COMPTROLLER'S OFFICE**

**HON. MARK C. POLONCARZ  
DIVISION OF AUDIT & CONTROL  
95 FRANKLIN STREET  
BUFFALO, NEW YORK 14202**

August 16, 2006

Erie County Legislature  
92 Franklin Street  
Buffalo, New York 14202



Dear Honorable Members:

The Erie County Comptroller's Office has completed a contract compliance audit of two agreements, the Intermunicipal Cooperation Agreement for Operation, Management and Improvement of City of Buffalo Parklands ("ICA") between Erie County ("County") and the City of Buffalo ("City") dated July 1, 2004; and the agreement between the County and the Buffalo Olmsted Parks Conservancy ("Conservancy") dated July 1, 2004 ("Agreement"). Both of these agreements, together, control the County's relationship with the former City of Buffalo parklands and the Olmsted Parks. In conjunction with the audit, a review of the operating financial reports of the Erie County Department of Parks, Recreation and Forestry's ("Parks Department"), City of Buffalo Parks Division ("Parks Division") for the years ended December 31, 2004 and 2005 was performed.

These audits, performed in accordance with Generally Accepted Government Auditing Standards ("GAGAS"), with the exceptions of a peer review and auditor training<sup>1</sup>, included such tests of records, inquiries, and analyses as considered necessary under the circumstances.

The objectives of the audit and review were to evaluate compliance with the ICA and the Agreement and examine the financial results of operations during the period.

Our review did not include an evaluation of the internal accounting controls over cash receipts at the Conservancy and also did not include an evaluation of the internal accounting controls over cash receipts at City parks taken over by the County on July 1, 2004.

No significant matters adversely affecting compliance with applicable laws, rules, and procedures came to our attention except as disclosed in this report. Our review was performed for the objectives previously described and would not necessarily disclose all instances of noncompliance with respect to areas of operation not reviewed.

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<sup>1</sup> A peer review is mandated every three years. This office is overdue for such a review. GAGAS also mandate a minimum of twenty hours of training per auditor per year, and recommend forty hours of training annually. Due to the County's fiscal cutbacks, no auditor in the Audit Department currently has received the minimum twenty hours of training this year.

## THE INTERMUNICIPAL COOPERATION AGREEMENT

### A. BACKGROUND

On July 1, 2004, following the respective approvals of the City Common Council, City Mayor, County Legislature and County Executive, the County entered into the ICA, a fifteen year inter-municipal Cooperation agreement, with the City to provide operational and management services for one hundred thirty six (136) City parks and fifty (50) parkways identified in the ICA (together the “Parklands”).

#### Under the Terms of the Agreement:

The City continues to own the Parklands and is responsible for maintaining, repairing and replacing the Parklands capital assets. A Capital Improvement Committee shall be established by the City and the County and shall periodically review the capital needs of the Parklands and make recommendations to the City and County for the same. (See ICA Article X)

All City-owned equipment and personal property including but not limited to, vehicles, machines and tools used by the City primarily for the maintenance of its Parklands shall be transferred to the County for the continued operation, management and improvement of such Parklands. (See ICA Article V)

The City shall also transfer and provide to the County by July 1, 2004 an accounting of all revenues received by the City with respect to all leases, permits, licenses, concessions, fees or other charges collected by the City which apply to Parklands activities or uses after July 1, 2004, pro rated as appropriate. (See ICA Article V)

The City shall pay to the County the initial annual sum of one million eight hundred thousand dollars (\$1.8 million) in equal quarterly installments of four hundred fifty thousand dollars (\$450,000). The first installment shall be due on or before July 1, 2004 with the second installment due on or before October 1, 2004. Thereafter, the first, second, third and fourth quarterly installments will be due on or before, January 1, April 1, July 1 and October 1 respectively. The agreement provides for negotiated increases and decreases after the third full calendar year of agreement (after 2007). (See ICA Article VI, and ICA Article VII)

Any and all City employees assigned to duties and responsibilities in the City’s Parklands, without exception, shall be eligible for transfer to the County and become County employees. (See ICA Article XI)

The City and the County shall establish an oversight committee to periodically review the operation of the Parklands. (See ICA Article XIII 13.4)

The City and County agree that the Conservancy shall operate, manage and maintain the City’s

Olmsted Parks and Parkways. (See ICA Article XIII 13.5)

All gas, electric, water and sewer utilities are to be provided to the Parklands at the City's sole cost and expense. (See ICA Article XVI)

The County shall develop a plan by December 31, 2005 to audit and manage Parklands utility usage and costs. (See ICA Article XVI)

**B. ACCOUNTS RECEIVABLE INVOICE PROCESSING**

Payments from the City were not always in accordance with Article VI of the ICA. Our examination found that the payments were consistently late:

- 1<sup>st</sup> quarter due 1/1/05, received 2/28/05 – 58 days late
- 2<sup>nd</sup> quarter due 4/1/05, received 7/22/05 – 112 days late
- 3<sup>rd</sup> quarter due 7/1/05, received 8/4/05 – 34 days late
- 4<sup>th</sup> quarter due 10/1/05, received 10/7/05 – 6 days late
- 1<sup>st</sup> quarter due 1/1/06, received 3/3/06 – 61 days late

The ICA has no provision requiring the County to provide invoices to the City for the Quarterly payments. However, the County as a courtesy issues quarterly invoices. Further review found that these invoices were not issued in a timely manner by the County's Parks Department. Of the six invoices examined, four were issued after the contractual payment due date. In one instance the invoice was issued 53 days after the due date. As result the County lost interest earning opportunities.

We also noted that the \$450,000 payment due April 1, 2005 and which was paid 112 days after the due date, was reduced by \$74,357.27. It was determined that the City reduced (offset) against contractual payments due the County the amount of outstanding (unpaid) invoices issued to the County for goods and services rendered by the City. However, there is no provision in the ICA to support the action of offsetting amounts owed against amounts due.

**WE RECOMMEND** that the County Parks Department develop a procedure to annually send invoices and record accounts receivables, appropriately dated to coincide with four quarterly due dates pursuant to the ICA. Subsequent monitoring of the Departments Accounts Receivable Aging Report will dictate if any follow up actions to collect are needed.

**C. ACCOUNTS PAYABLE INVOICE PROCESSING**

Invoices totaling \$51,381.98 from the City for fuel used by County Parks' vehicles during the period

July 2004 through June 2005 were identified as part of the offset against the April 1, 2005 account receivable noted above. No accounting transactions were prepared by the Parks Department to record this transaction and consequently expenditures for the Parks Division were understated.

County procedures provide that the Division of Information and Support Services (“DISS”) is generally responsible for making payments for fuel purchases. Costs are later charged to departments using interdepartmental billings. We found that fuel usage costs paid to the City were not charged back to the Parks Department, thus understating actual costs to the County to operate the City Parks.

In October 2005, upon this Office’s discovery of this discrepancy, we recommended that the Parks Department prepare the necessary accounting adjusting entry to properly state the account balances.

Our subsequent review of additional invoices found that nine fuel usage invoices issued by the City for the months of July 2005 through March 2006 totaling \$60,591.64 have still not been paid by the County. However, upon our discovery, this Office prepared an accrual entry to record a 2005 liability on the County’s SAP system. Discussions with staff from both the Parks Department and DISS’ Bureau of Fleet Services revealed that neither took action to initiate payment requests to reimburse the City of Buffalo for fuel used by County vehicles.

**WE RECOMMEND** that the Parks Department, in conjunction with DISS take action to ensure that invoices from the Buffalo are reviewed for propriety and paid in a timely manner.

**WE RECOMMEND** that the Parks Department, in conjunction with the Department of Law and representatives of the Buffalo review the ICA to ensure that proper oversight is established to monitor compliance with the ICA and that policies and procedures are created to resolve discrepancies and/or violations.

**WE RECOMMEND** that the Parks Department and the Bureau of Fleet Services develop procedures to process fuel invoices on a timely basis and record accruals in the County’s SAP accounting system when appropriate.

**D. REVENUE COLLECTIONS**

Pursuant to the ICA the County received \$105,815 from the City representing the pro-rated fees collected by the City prior to July 1, 2004. Our review of the detail reports supplied by the Parks Department found that the calculations were reasonable.

We also found that revenues were not always recorded on SAP under the correct revenue line. For instance, we found that December 2004 ice time revenue of \$2,007 was erroneously recorded as Miscellaneous Receipts and November 2004 ice time revenue of \$205 was erroneously recorded as Fees – Buffalo Parks. In another instance we found that \$92 of revenue that should have been recorded as Fees – Buffalo Pools was instead recorded as Fees – Buffalo Parks.

**WE RECOMMEND** that the Parks Department consistently and accurately record all revenues in SAP in the appropriate accounts.

**E. TRANSFER OF EMPLOYEES FROM CITY OF BUFFALO TO ERIE COUNTY EMPLOYMENT**

The ICA contained provisions that forty two (42) City Parks employees would transfer to County employment after July 1, 2004. Of that number, one employee retired, 6 resigned, one was transferred to the County’s Department of Senior Services and one left because the Assistant Deputy Commissioner-Buffalo City Parks Division position was abolished in the County’s Adopted 2005 Budget. That meant that nine of 42 City employees departed the City Parks Division. Per the ICA (Schedule 2): “All employees who are eligible and wish to retire within five (5) years of their transfer to the County must return to the City for the purpose of retiring from the City with then applicable retiree health insurance under the City collective bargaining agreement that would be applicable to them had they remained City employees.” Erie County’s SAP accounting system shows that the one retiree appropriately did not retire under the County’s retirement plan and is not collecting County retiree health insurance. All of the positions mentioned above, except for the Assistant Deputy Commissioner title and a Park Utility Worker title were refilled with new County employees. Our review found that of the 8 that left County service, 2 were not paid their remaining accrued leave balances. The total that should have been paid out to the two employees was \$121.41. All other payouts due to employee departures from County service were accomplished in accordance with the ICA and County policy.

**WE RECOMMEND** that steps be taken to ensure that when employees leave County service, these employees receive contractually-required payments for all applicable remaining leave balances.

**F. TREATMENT OF PAY TELEPHONES IN THE PARKS**

During our review, we discovered that numerous invoices for pay telephones located in City Parks, the exact number of which could not easily be determined, have not been paid since the County assumed control of the parks in July 2004. Those telephones continue to accrue charges. Of the invoices examined, thirteen (13) had current bills showing an average monthly late charge of \$33.39 per telephone, a total of \$434 per month with a total amount due for the 13 pay telephones of \$31,214.13. We further identified that the City is still listed as the billing address and responsible party on the invoices and that some of these accounts have been referred to a collection agency.

Discussions with City staff revealed that they believe these invoices are covered by the ICA and should be paid by the County.

Under Article V of the ICA: “... the City shall continue to be responsible for its obligations (if any) thereunder with respect to capital improvements and utilities...” Article XVI states: “The City shall continue to cause all gas, electric, water, and sewer utilities to be provided to the Parklands at the

City's sole cost and expense and at no cost or expense to the County..." The ICA does not specify or mention telephones, including pay telephones in City parks.

**WE RECOMMEND** that Parks Department management, the Law Department and the City jointly review this finding in order to determine the responsible party for payment of pay telephone service charges in City parks and arrange for payment.

**WE FURTHER RECOMMEND** that the County should consider amending the ICA to address and delineate responsibility for payment of City Parks pay telephones, land-line telephones and mobile phones used in/for the City parks.

**WE ALSO RECOMMEND** that the Law Department review any laws, ordinances or regulations to determine the need, if any, for maintaining pay telephones in City parks.

#### **G. COMMITTEES AND PLANS**

The ICA contains a number of provisions pertaining to the creation of committees and plans to help govern and manage the City parks. Article XVI of the ICA states: "The County shall, at its cost and expense, develop a plan by December 31, 2005 to audit and manage Parklands utility usage and costs, with the goals of decreasing utility costs, decreasing energy and water consumption and improving the environment." There has been no such plan developed by the County to manage Parkland utility costs.

Article X of the ICA states: "The City and the County shall establish a Capital Improvement Committee which shall include the County Commissioner of Parks, Recreation and Forestry, the City Commissioner of Public Works, Parks and Streets, and the Buffalo Olmsted Parks Conservancy to periodically review the capital needs of the Parklands and to make recommendations to the City and the County for the same." According to the Erie County Commissioner of Parks, a committee has been established, but minutes for this committee have not been recorded.

Article XIII, Section 13.4 of the ICA states: "The City and the County shall establish an oversight committee to periodically review the operation of the Parklands as provided for in this agreement and to make non-binding recommendations with respect thereto. The committee shall include representatives of the respective administrations, legislative bodies and unions." This committee has been established, but minutes for this committee have not been recorded.

**WE RECOMMEND** that Parks management work with DISS and the County Department of Public Works to develop a plan to audit and manage Parklands utility usage and costs.

**WE RECOMMEND** that the above committees maintain minutes of their proceedings.

## H. FINANCIAL REPORT REVIEW

The operating results, actual revenues less actual expenses, in the 2005 year-end financial reports for the Parks Division show a \$1,276,531 loss from operations before comparing to budget estimates. However, it must be noted that the 2005 budget plan included the use of fund balance from 2004 in the amount of \$500,000, as a revenue source, thereby reducing the 2005 operating loss to \$776,531.

Our review of operations for the 6 months in the 2004 budget year found that the Division yielded a \$500,000 surplus. This was used to generate the \$500,000 Fund Balance in the 2005 budget. The receipt of the \$620,745 from the City represented the value of leave accruals for the City employees transferred to the County was the primary transaction responsible for realizing a fund balance in 2004. In addition, \$103,000 of fees collected prior to the July 1, 2004 Parks takeover were received from the City.

A comparison of the 2005 budget to the operating results reveals that expenses were \$297,803 greater than budget and that revenues adjusted to recognize the use of fund balance were \$423,380 less than budget combining for total budget deficit of \$721,183.

The primary accounts contributing to this shortfall are:

- o Fringe benefits exceeded appropriations by \$286,722.
- o ID Buffalo Parks Service and ID DSS Service billings to and from the Department of Social Services were short by a net of \$327,443.
- o Fees, fines and charges revenue were short by \$406,450.

The above listed shortfalls were partially offset by positive balances in other accounts. Nevertheless, these significant negative variances in these accounts reflects a need for better budgeting. When this was discussed with County Parks management, they were quick to respond that their department does not set the fringe benefits estimate. That number is established by the Division of Budget, Management and Finance.

**WE RECOMMEND** that Parks Department management take a proactive approach to monitor its operational costs and budget balances and take appropriate action to correct for developing trends relating to cost overruns and revenue shortfalls.

**WE ALSO RECOMMEND** that Parks Department management immediately notify the Director of Budget, Management and Finance when deficiencies occur so corrective action can be taken, including appropriate legislative measures.



**I. FAILURE OF CITY TO MAKE QUARTERLY PAYMENTS**

Article VIII of the ICA states: “Should the City fail to make one or more Quarterly Payments to the County, the County may, at its sole discretion, withhold payment to the City of its distributive share of the sales tax in an amount equal to the payment(s) owed by the City hereunder.”

The County collects the sales tax for all municipalities in the County, including the City. However, the County’s ability to withhold payment of sales tax to the City in the event of a breach of Article VIII is no longer possible since the Buffalo Fiscal Stability Authority now intercepts the City’s share of the sales tax directly from New York State.

**WE RECOMMEND** that the County develop an alternative plan that gives the County recourse in the case of the City’s failure to make quarterly payments to the County.

**J. ESCALATION CLAUSE**

Article VII of the ICA provides that “At the end of the third full calendar year of this Agreement (2007) 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” that shall be known as an “Adjustment.” In consideration of a number of factors, the City and the County shall make a concerted, good faith effort to arrive at an appropriate Adjustment during each review. Should the County and City fail to agree upon an Adjustment before the due date of the Third Quarterly Payment following each review (July 1) or agree on an alternative dispute resolution process, the Annual Payment will be increased for the next three years by the lesser of 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% or the previous three years.

There is no specific provision in the ICA for the County to recoup cost overruns or refund savings to the City of Buffalo for the first four years. Should future negotiations to recover costs and increase the City’s contributions at levels sufficient to prevent operating losses in future years fail, the default percentage of 7.5% will be activated.

Using the default and percentage rate of 7.5%, the amount of the annual default increase for the next three years (2008, 2009 and 2010) would be \$135,000 per year bringing the adjusted annual payment to \$1,935,000. Subsequent increases to the adjusted annual payment would be as follows:

For Years Beginning	Increase	New Adjusted Annual Payments
7/1/2011, 2012, 2013	\$145,000	\$2,080,125
7/1/2014, 2015, 2016	\$156,009	\$2,236,135
7/1/2017, 2018	\$167,710	\$2,403,845

If the Parks Department management fails to implement cost saving and/or revenue enhancement initiatives, operating losses will be realized in future years and will be a burden on the County's General Fund which will be required to cover cost overruns and revenue shortfalls.

Assuming the 2005 deficit in the City Parks Division will remain relatively constant for the term of the ICA, the annual increase to the City's contributions using the default percentage is not sufficient to fund the Division's operations.

**WE RECOMMEND**, based on the results of operations for the first calendar year (2005) that resulted in a \$721,182 deficit, Parks Department management must take appropriate measures to control costs and/or enhance revenues to prevent such losses from occurring in 2006 and 2007.

**WE RECOMMEND** that Parks Department management perform annual reviews of operations and issue reports to the County Executive, County Legislature, City Mayor and City Common Council. Such reports should include detailed explanations of the causes generating either a deficit or surplus and management's corrective action plan.

#### **K. AUDITOR COMMENTS**

At the time the County Legislature was considering the ICA for the operation of the City Parks System, documents submitted by the County Executive describing the plan contained language stating it "will not add net costs to the County's general operating fund, with County operating expenses totally offset by a combination of annual payments made by the City to the County (\$1.8 million annually for the first three years of the 15-year term and payments to be adjusted thereafter), park and recreation facility rents, fees and charges, and State youth and job training program funding." In addition, correspondence from the then-Commissioner of Environment and Planning described the fiscal impact as follows: "There is no adverse fiscal impact on Erie County's general fund budget." All representations to the Legislature were to the effect that the City's annual payment to the County, combined with the County's receipt of user fees, would cover all expenses and there would be no additional County General Fund financial support necessary for the City Parks Division.

The comments above provide the appearance that the results of operations under the ICA will break-even, generating neither a surplus nor a deficit.

Our findings show that the Parks Division incurred an operating loss and budget deficit for the fiscal year ended December 31, 2005 of over \$700,000 that will be funded by other countywide accounts with surplus balances. It is quite apparent that management oversight and efforts were insufficient to ensure the County's operation of the City Parks was budget-neutral.

Although there is an escalation clause in the ICA scheduled to take effect after the third full year of operations (after 2007), the increase in payments from the City to the County will not be sufficient to cover the County's actual operating costs if the results of operations continue to generate a deficit.

**WE RECOMMEND** that the City and County immediately establish a fiscal committee to perform annual operational reviews and evaluations of the Parks Division.

**WE RECOMMEND** that action be taken to establish the oversight committees specified in the ICA. Analysis by and input from these committees could be used as management tools to ensure that operations are adjusted to achieve a break-even status.

**WE STRONGLY RECOMMEND** the City and County review the ICA and amend it to address issues relating to the City's payments, failure to pay, fuel usage and telephone invoice issues as well as delineating and clarifying each entity's respective responsibilities and obligations.

In conjunction with our review of the financial reports for the Parks Division we noted an additional material revenue source funded through Interdepartmental Billings ("ID billings") with the Department of Social Services ("DSS"). These ID billings are a result of the operation of Welfare to Work Programs that have welfare clients assigned to the Parks Division for training and work experience.

Since this revenue and related expenditures are not included in either the ICA or the Conservancy Agreement, we did not perform any substantive or transaction testing with regards to the interdepartmental revenues and expenses between the Department of Social Services ("DSS") and the Parks Division. These revenues, budgeted for \$1,838,560 in 2005, and expenses, budgeted for \$643,495 also in 2005, are a significant component of the Parks budget. These revenues and expenses do have a large Federal and State component. It should be noted that there was net budget shortfall for 2005 ID billings of \$327,443. The ID billings for 2005 were not recorded monthly, as per County and accounting practice, but were recorded with one accounting entry made at the end of fiscal year 2005.

Further review and discussion with representatives of the Parks Division and DSS revealed that two programs are being administered:

1. Buffalo Parks COPS Program – salary and fringes are paid for Community Recreation Aids and Recreation Instructors at Community Centers under the Preventative Services Program, and
2. WTW # Welfare to Work Program – salary and fringes are paid for City Parks Maintenance workers.

Generally, reimbursements relating to welfare client workers that are under the Temporary Assistance to Need Families ("TANF") program are at 100%. Conversely, reimbursements for non-TANF workers require a local share cost that we were informed to be 35% of salary and fringes that is paid back to DSS through the ID billing process.

**WE RECOMMEND** that DSS record ID billings on a monthly basis, as per generally accepted accounting principles.

In our opinion, internal accounting controls concerning accounts receivable and accounts payable items were not adequately followed by the County. As an example, invoices to the City were not issued timely; conversely invoices received from the City were not processed or paid timely. A failure to record and track transactions resulted in the City opting to net payables against receivables, further misstating the financial records of the County.

## THE OLMSTED PARKS CONSERVANCY AGREEMENT

### L. BACKGROUND

On July 1, 2004, following the approvals of the County Legislature and County Executive, the County entered into a five year agreement with the Conservancy to manage, operate, maintain, restore and enhance the Olmsted Parks and Parkways (as previously identified, the “Agreement”). The Agreement is renewable, at the Conservancy’s discretion, for each of two (2) consecutive five (5) year terms. The Agreement, and rights, responsibilities and duties of the parties are subject and subordinate to the ICA between the City and the County. In the event of termination of the ICA, the Agreement shall be assigned by the County to the City. There are twelve (12) Olmsted parks and fourteen (14) Olmsted circles and parkways identified in, and subject to the Agreement.

#### Under the Terms of the Agreement:

The County and the Conservancy acknowledge and agree that although this Agreement sets forth certain duties and responsibilities of the City which may be the subject of the ICA, neither the County nor the Conservancy are, or shall be deemed to be, guarantors of the City’s responsibilities or duties described in this Agreement or as provided for in the ICA. In the event of conflict between the terms and conditions of this Agreement and the terms and conditions of the ICA, the ICA shall control. (See Agreement Section 1 page 6)

The Agreement describes the maintenance and repair responsibilities of the Conservancy and, as outlined in the ICA, the City for Parkways, Circles and Parks. (See Agreement Section 3)

The Agreement specifies that the County will contract for up to thirty (30) portable toilets on a seasonal basis. (See Agreement Section 4c)

For the management, maintenance and repair of certain facilities as listed, the Conservancy is responsible for general routine maintenance and minor, non-structural repairs. The County and/or the City is responsible for, or will coordinate, all structural, mechanical and major repairs that involve structural damage or improvements, and any major utility work (major electrical, water sewer, gas, fiber optics, telephone, etc.) as provided in the ICA. (See Agreement Section 5)

The funding obligations specify that the County will employ 19 employees assigned to Olmsted Parks and Parkway duties until such time as such employment and assignment may cease by reason of reassignment, retirement, resignation or other cause. The County will be responsible for all wages and fringe benefits except for accrued overtime after January 1, 2005, which shall be paid by the Conservancy to the County on a quarterly basis. (See Agreement Section 9a)

Upon cessation of such employment of any such County employee assigned to the Conservancy, the County shall pay the Conservancy at the rate of seventy percent (70%) of such employee’s salary and benefits, such benefits to be calculated on a basis mutually agreeable to the County and to the

Conservancy to be periodically calculated during the remaining term of this Agreement for each full time employee. (See Agreement Section 9a)

The County shall pay to the Conservancy, as a contribution to the Conservancy's costs of performance of its obligations, the sum of \$329,190 each year, adjusted in a manner similar to the adjustment of the City's payment to the County under the ICA, which is in lieu of future public benefit funding. The sum to be paid in advance in four (4) equal quarterly installments on before the fifteenth day of January, April, July and October. (See Agreement Section 9b)

The County, City and Conservancy shall establish a Capital Improvement Committee consisting of the County Commissioner of Parks, Recreation and Forestry ("Commissioner"), the City Commissioner of Public Works, Parks and Streets and representatives of the Conservancy to complete and mutually adopt a twenty (20) year management and restoration plan for the Olmsted Parks and Parkways. (See Agreement Section 7)

Each year the County and the Conservancy shall consult with each other and with the City with respect to capital projects and expenditures to be proposed for inclusion in the City's and the County's capital program budget for the next fiscal year and for funding by the Conservancy. Such projects and expenditures shall be generally in accordance with the 20-year Management and Restoration Plan, as amended from time to time. (See Agreement Section 10)

In September of each year, the Conservancy shall provide to the County a detailed line item budget for the next County fiscal year showing proposed operating revenues and expenditures of the Conservancy in relation to the Olmsted Parks and Parkways for the County's reasonable review and approval. (See Agreement Section 11)

Subject to the approval of the Commissioner, which shall not be unreasonably withheld, the Conservancy may enter into such subcontracts and contracts for the purchase of goods or services, as shall deem appropriate in the performance of its responsibilities under the Agreement. (See Agreement Section 15)

The Conservancy and/or the County shall collect all concession, permit and golf revenues within the Olmsted Parks and Parkways beginning January 1, 2005. The Conservancy shall receive the first \$370,000 of all revenue. Revenues in excess of \$370,000 shall be shared as follows:

- o Seventy (70%) percent to the Conservancy; and
- o Thirty (30%) percent to the County.

Revenues from the Conservancy's self-operating concessions shall not be subject to the sharing formula and be collected and retained directly by the Conservancy. In the event the Conservancy operates concessions, the Commissioner and the Conservancy shall determine what amount of revenues shall be used for purposes of calculating the amounts to be received from and shared with the County pursuant to the Agreement. (See Agreement Section 16)

The County will assign to the Conservancy equipment for use in the Olmsted Parks and Parkways including a minimum of 14 pick-up trucks and 14 utility vehicles “gators” as well as other equipment. (See Agreement Section 17c)

The County, the City and the Conservancy shall establish an oversight committee to review the operation of the Olmsted Parks and Parkways and jointly determine the park fees charged for all events and activities within the Olmsted Parks and Parkways. (See Agreement Section 21)

The County, the City and the Conservancy shall establish an oversight committee to review the operation of the Olmsted Parks and jointly approve a naming rights policy and effect a change in the name of a park facility to recognize major donors to the Olmsted Parks and Parkways. (See Agreement Section 22)

The County, the City’s Special Events Committee and the Conservancy shall develop protocols to jointly review special events. (See Agreement Section 23)

The City through its police force shall provide general park security. However, the Conservancy will require the permittee to provide and pay for such security services, as the Conservancy shall consider appropriate. (See Agreement Section 24)

The Commissioner and the Conservancy shall develop the procedures and standards for a Parks Inspection Program Manual. (See Agreement Section 26)

For the period July 1, 2004 through December 31, 2004, the Conservancy shall receive, as transition funding, the following cash payments from the County: (See Agreement Section 37)

- a) \$294,375 in cash to be paid in full by July 31, 2004.
- b) 100 percent of Olmsted-park related concession/permit/golf revenue generated prior to July 1, 2004, not to be less than \$185,000. The amount to be paid within 10 business days of receipt thereof from the City under the ICA that specifies that the City shall also transfer and provide an accounting thereof, to the County by July 1, 2004, all revenues received by the City with respect to all leases, permits, licenses, concessions, fees or other charges collected by the City which apply to Parklands activities or uses after July 1, 2004, pro rated as appropriate.
- c) Beginning July 1, 2004, revenue from Olmsted-park related concession/permit/golf revenue generated from July 1, 2004 through December 31, 2004 will be paid by the County to the Conservancy within 10 business days of receipt. On January 1, 2005, Section 16 of the Agreement will take effect.

**M. ACCOUNTS PAYABLE**

Under Section 9(b) of the Agreement, the County is obligated to make payments to Olmsted in the amount of \$329,190 each year. As per Section 12, these are to be broken into 4 quarterly payments payable on or before the 15<sup>th</sup> day of January, April, July and October.

Our review found that all quarterly payments of \$82,297.50 have been made to Olmsted. Some of the payments however, were not made in a timely manner.

	<b>Payment Due</b>	<b>Payment Made</b>	<b>Days Late</b>
1st Quarter	1/15/2005	3/4/2005	48
2nd Quarter	4/15/2005	5/2/2005	17
3rd Quarter	7/15/2005	7/15/2005	0
4th Quarter	10/15/2005	10/7/2005	0
1st Quarter	1/15/2006	1/27/2006	12
2nd Quarter	4/15/2006	3/31/2006	0

**WE RECOMMEND** that the Parks Department establish procedures to ensure quarterly payments are made on a timely basis.

**N. REVENUE COLLECTIONS**

We confirmed with the Conservancy that at January 1, 2005, revenues consisting of golf fees, concessions and permits are collected and deposited by the Conservancy in a Conservancy bank account.

The Parks Department is not receiving revenue reports from the Conservancy. Per Section 16 of the Agreement, revenues in excess of \$370,000 shall be shared with 70% to the Conservancy and 30% to the County. The County cannot determine potential revenue earnings without this information from the Conservancy. The actual revenues recorded by the Parks Division for 2005 were \$2,814 for greens fees, \$16,875 for general parks fees and \$38,741 for fees for the Buffalo pools. We cannot determine if these monies came from Olmsted or from another source.

In the Conservancy cost center in SAP, no revenue transactions have been recorded.

**WE RECOMMEND** that the Parks Department require that Olmsted provide revenue and bank deposit reports from the Conservancy on at least a monthly basis so that it corresponds to the contract.



## **O. TRANSFER OF EMPLOYEES TO THE CONSERVANCY**

Under Section 9(a) of the Agreement, the County will employ 19 of the 61 City employees transferred pursuant to the ICA. There was no listing, as required by the Agreement, identifying the 19 former City employees assigned to the Conservancy but paid by the County. However, based on a list prepared by the County Division of Budget, Management and Finance, 19 individuals and position titles were identified as being assigned to the Olmsted Parks until such time as such employment or assignment may cease.

Further, we were unable to verify on the SAP payroll module that any Parks workers are assigned to the Olmsted Parks. The County does not delineate in SAP, or in the annual County budget, which employees are working for or assigned to Olmsted. With no employee assigned to the Olmsted Branch of the City Parks Division it is impossible to determine the number of hours worked on Olmsted and non-Olmsted parks. The Parks Department accountant confirmed this finding and informed us that some of the employees do switch between the Olmsted and non-Olmsted Parks. Without looking at each time sheet for each employee, there is no way to identify employee hours expended on Olmsted and non-Olmsted parks or to know how much overtime is actually worked in the Olmsted Parks. This lack of information makes the tracking of overtime costs related to Olmsted unusually difficult.

Two Olmsted assigned employees elected to retire and pursuant to the ICA returned to the City for the purpose of retiring from the City. In accordance with the ICA each received their appropriate cash payouts for accrued leave and retiree sick bonuses from Erie County. A third Olmsted assigned employee resigned.

All the cash payouts appeared reasonable and discussions with the Chief Payroll Supervisor of the County's Personnel Department revealed that neither of the 2 retirees are receiving any Erie County retirement benefits, and the worker that resigned is no longer employed in the Parks Department. We have confirmed that the positions have not been refilled and the position control numbers have been deleted from the County's payroll system.

**WE RECOMMEND** that all payroll transactions of the Parks Department employees assigned to the Conservancy are recorded in the Olmsted Parks Division Cost Center 1644020. This recommendation is being implemented by the County.

## **P. OVERTIME**

Examination of payroll records revealed that overtime was earned by 5 different Olmsted assigned employees during 2005, totaling \$2,570.20. This review was based on employees originally assigned to Olmsted at the time of transition. This was split as follows:

- 1<sup>st</sup> Quarter - \$2,142.87
- 2<sup>nd</sup> Quarter - \$0.00
- 3<sup>rd</sup> Quarter - \$232.60
- 4<sup>th</sup> Quarter - \$194.73

Under the Agreement, Section 9(a): "... overtime shall be paid by the Conservancy to the County on a quarterly basis." However, the County has not billed the Conservancy or received payment for the overtime costs.

**WE RECOMMEND** that the Parks Department prepare and send invoices to the Conservancy to recover the overtime wages paid in 2005 to Olmsted assigned employees.

**WE RECOMMEND** that these employees should be recorded on SAP under an Olmsted designation so they can be tracked for overtime purposes, for which Olmsted is required to reimburse the County.

**WE RECOMMEND** that the Parks Department establish procedures to monitor all overtime wages and segregate those wages for the purpose of obtaining reimbursement from the Conservancy.

#### **Q. DUAL EMPLOYMENT**

During our review, we discovered that a City Parks worker simultaneously held two County positions, an acceptable practice covered by County's Personnel Policies and Procedures and the County's Handbook. Upon generating an SAP report to identify additional employees with dual positions, we found 7 individuals working in the City Parks Division. We performed a limited examination of the data and found that 2 of the 7 employees had instances of dual earnings for the same hours worked in their regular and second position. The first employee was paid in both positions for the hours of 2:30 p.m. to 3:00 p.m. on July 28, 2004. The second employee was paid for 4 sick hours taken from 11:00 a.m. to 3:00 p.m. on November 18, 2004 in his regular position, while receiving payment for working from 12:00 p.m. to 2:00 p.m. and 2:30 p.m. to 6:30 p.m. in his second position creating 2 and one half hours of dual earnings. We intend to bring this to the attention of the County Personnel Department for possible action.

The County's Employee Handbook states: "Under no circumstances will dual compensation be paid to any employee for the same hours." Erie County Personnel Policies and Procedures, Chapter V, Section 9, Dual Employment in County Service states: "There can be NO CONFLICT IN HOURS FOR SEPARATE EMPLOYMENTS, nor will dual compensation be paid by the County to any employee for the same hours." It also states: "Under no circumstances is it permissible to ... perform the duties of a secondary County job ... during the business hours of a paid County position."

Our review also revealed that one employee had regular work hours of 7:00 a.m. to 3:00 p.m. and began his second position job at 3:00 p.m. 11 times in the 2 pay periods examined. Erie County Personnel Policies and Procedures states: “Employees with two County jobs **MUST** schedule at least 15 minutes between work shifts if both jobs are in the same building, or at least 30 minutes between work shifts if they must travel from one location to another.”

**WE RECOMMEND** that the Parks Department and Personnel Department take steps to recover the amount of overpayments made to the 2 employees identified. As a condition of employment, the Parks Department should require employees with dual positions to read and understand County policy and procedures regarding dual employment. Further, the Department should implement procedures to have time and attendance personnel monitor the daily input of dual positions employees to ensure compliance with County Personnel Policies and Procedures. Lastly, Parks Department management should periodically review all employees with dual employment and make sure all applicable policies and procedures are being adhered to.

**WE RECOMMEND** that the Commissioner of Personnel initiate an evaluation with the SAP programmers and support team to determine if the SAP system can be configured so there can be no conflict in hours for separate employments, nor will dual compensation be paid by the county to any employee for the same hours.

**WE RECOMMEND** that the Parks Department perform a complete analysis of the time and attendance wages paid to all individuals earning wages for a second position to ensure compliance with Erie County Personnel Policies from July 1, 2004 to date to identify if additional dual earnings occurred.

#### **R. OTHER FUNDING OBLIGATIONS**

Under Section 9(a) of the Agreement, the County will employ 19 assigned employees until their cessation or reassignment. “Upon the cessation of such employment of any such County employee, assigned to the Conservancy, the County shall pay the Conservancy at the rate of seventy percent (70%) of such employees salary and benefits, such benefits to be calculated on a basis mutually agreeable to the County and to the Conservancy to be periodically calculated during the remaining term of this agreement for each full time employee.” Currently, the County is paying the Conservancy for 3 employees that left service and providing personnel services for 16 employees.

Providing cash payments to Olmsted in lieu of County provided personnel services is a supplement to Public Benefit funding that in the past, was provided for in the County’s annual adopted budget, both as Executive and Legislature appropriations. At some point in time, when all 19 employees leave County service or are no longer assigned to the Conservancy, the County is obligated to pay the Conservancy 70% of their salaries plus an amount for fringe benefits. Using 2006 salary scales and fringe benefit rate of 46.6%, we have estimated that the value of the County’s current contribution of personnel services and cash to the Conservancy to be \$1,238,914.

Conversely, using the same salary scales the annual cash payment to the Conservancy is estimated to be \$669,153 if all 19 Olmsted assigned employees leave County service or are reassigned. Adding the annual payment in lieu of Public Benefit funding of \$329,190 increases the total to \$998,343.

Any personnel cost savings will only be realized if the County does not replace the positions assigned to the Conservancy.

Annual County budgets provided a cumulative total of \$1,215,337 to the Conservancy for the years 2000 through 2004 that ranged from \$191,000 to \$325,000 annually.

Parks workers are assigned to specific zones in Olmsted Parks. However, it is possible that the assigned number of workers in the Olmsted Parks may be greater than the 16 (19 original less the 3 that left County service) that remain from the transition date. If there are more than 16 that continue to work in the Olmsted Parks, the County is then paying for more employees than contractually obligated with no recourse to be reimbursed for wages paid above contractual limits.

**WE RECOMMEND** that Parks Department management closely monitor the operating costs incurred to provide services to the Conservancy and ensure that no more than 16 workers are assigned or working in the Olmsted parks. The Parks Department has already implemented a process to address this concern.

## **S. COMMITTEES**

Section 7 of the Agreement calls for the establishment of a Capital Improvement Committee to complete and adopt a 20-year Management and Restoration Plan.

Section 21 of the Agreement calls for the establishment of an oversight committee comprised of the County, City and Conservancy to review the operation of the Olmsted Parks and Parkways to jointly determine the park fees charged for all events and activities within the Olmsted Parks and Parkways.

Section 22 of the Agreement calls for the establishment of an oversight Committee comprised of the County, City and Conservancy to review the operation of the Olmsted Parks and Parkways and jointly approve a naming rights policy.

Section 23 of the Agreement specifies that the County, the City's Special Events Committee and the Conservancy develop protocols to jointly review special events permits.

Parks Department personnel confirmed that formal minutes for these committees are incomplete. However, County officials has met numerous times with the Conservancy to discuss such topics as the 20 year management plan, budgetary concerns, and capital improvements. The Conservancy's website ([www.buffaloolmstedparks.org](http://www.buffaloolmstedparks.org)) shows their detailed 20 year management plan. Located within this plan is a Special Events and Permit Policy that has recently been updated as shown in the September 29, 2004 Buffalo Olmsted Advisory Council meeting minutes. This Special Events Policy was to take effect beginning with the 2005 permit season.

**WE RECOMMEND** that the Parks Department issue the minutes of each committee meeting and any reports generated by them to the County Executive, Legislature, County Comptroller and the City.

#### **T. TRANSITION FUNDING**

Section 37 of the Agreement states that the County is to pay \$294,375 to the Conservancy by July 31, 2004. The SAP system shows that two payments were made, one for \$200,000 and the second for \$94,375. Both the payments were processed on July 30, 2004. Section 37 also stated that 100% of Olmsted related revenue generated prior to July 1, 2004 and collected by the City per the ICA, not to be less than \$185,000, shall be paid to the Conservancy. At the end of April 2006, there was \$68,905 still due to the Conservancy. At our request, a 2005 fiscal year liability was established March 8, 2006 on the County's SAP accounting system.

The third component of the transition funding is the revenue collected at the Olmsted Parks by the County from July 1, 2004 through December 31, 2004. Such revenue was to be paid within 10 business days of receipt. We found that the County made no payments of revenue collected to the Conservancy in the time frame specified.

Revenue collections totaling \$133,905 for the period July 1 through December 31, 2004 were certified by Parks Department staff in March 2006.

We found that the 2004 budget appropriations of the Parks Division were insufficient to satisfy all the provisions of Section 37 concerning Transition Funding. The initial City Parks Division budget adopted by the Legislature on June 18, 2004 contained a revenue line for fees that, per the Agreement, was to be paid to the Conservancy. However there was no budget appropriation in the adopted resolution to allow payment of the fee revenue collected by the County to the Conservancy. The 2004 appropriations shortfall was \$268,905. We found that \$200,000 was paid in 2004 by the Erie County Industrial Development Agency ("ECIDA") to the Conservancy on behalf of the County. One specific payment of \$100,000 (of the \$200,000) was traced as paid to the ECIDA charging Environment and Planning appropriations dedicated to the ECIDA. The appropriation source of a second payment of \$100,000 paid by the ECIDA to the Conservancy could not be traced directly to a County appropriation. Consequently, funds earmarked for ECIDA purposes were paid to the Conservancy.

Further, only through the intercession of the County Comptroller's Office and after the Conservancy's repeated requests, was the final transition funding amount of \$68,905 due to the Conservancy paid on May 5, 2006.

**WE RECOMMEND** that the Parks Department, and the Division Budget, Management and Finance review the operating results in the City Parks Division to ensure future budgets are set at appropriate levels.

#### U. AUDITOR COMMENTS

The lack of required attachments and the failure to segregate and record costs relating to the Agreement with the Conservancy on the County's accounting system required the reconstruction of data necessary to perform our review. The cost of Personnel services is the largest component of the Agreement and the only items separately recorded in the Olmsted Parks Branch of the Parks Division were the annual payment of \$329,190 and an additional encumbrance of \$40,000 for repair parts.

As noted in our findings, the Agreement required the establishment of oversight committees. Had such committees been functioning, we believe areas of deficiency could have been identified, and corrective operational and budgetary actions by the Parks Department could have been taken.

It must be understood that the ICA for the Operation of the City Parks System is the precursor that allowed for the Agreement between the County and the Conservancy to be executed.

The ICA contains language that acknowledges that the County will enter into an agreement with the Conservancy to operate and maintain the Olmsted Parks and Parkways, whereas the Conservancy Agreement reiterates the responsibilities of the City of Buffalo as contained in the ICA.

As an example of the confusion concerning delineation of responsibilities between the County, City and Olmsted, we note the June 2006 incident in which, at the request of a property owner, the County Forester authorized the removal of a tree on Richmond Avenue in Buffalo, only to have that authorization revoked by the Deputy County Executive after neighbors objected stating that the tree was City property, not the property owner's. Days later, and after media attention, it was determined that since the tree is on Richmond Avenue, an Olmsted Parkway, it is considered City property and the County did not have the authority to permit its removal.

Legislative approval was given under the premise that the takeover and operations of the City's Parks, including the Conservancy Agreement, would have no fiscal impact on the County's general fund budget. Our examination revealed that 2005 operations (prior to year-end budget balancing amendments) incurred a deficit of \$721,182. Unless management initiatives are implemented to better monitor and control operating costs, there is no expectation that the Parks Division will be cost-neutral, but rather, the Division will continue to require supplemental appropriations from the General Fund.

The Parks Department has set up a meeting with the County Department of Public Works, County Department of Environment and Planning, the City's Parks Department and the Conservancy to formally establish all the committees as specified in the agreements.

**WE RECOMMEND** that action be taken to establish the oversight committees specified in the Agreement and appropriate reports and/or minutes be generated. Analysis by and input from these committees could be used as management tools to ensure that operations are adjusted to achieve a break-even status.

We strongly urge the City and County review the Agreement as well as the ICA to address issues relating to the City's and County's contributions as well as delineating and clarifying their respective responsibilities.

In our opinion, internal accounting controls concerning accounts receivable were not adequately followed. Quarterly payments to the Conservancy were not made on a timely basis and Conservancy revenue reports are not being received by the County. Without these revenue reports, the County cannot determine if it has received all the monies it is due under the Agreement. County employees assigned to the Conservancy are not designated as such on the SAP payroll module. As a result, these costs cannot be easily tracked. The overtime worked by County employees on Olmsted parks was not reimbursed by the Conservancy. One employee was paid for working the same hours in two different jobs. Once again, committees as required were not established. As a result, necessary tasks were not completed and the oversight and planning tasks these committees were to perform was not undertaken. All the transition funding was not paid in a timely manner to the Conservancy by the County.

#### **SUMMARY**

Managing the former City parks has cost the County over seven hundred thousand dollars more than was budgeted for 2005. Expenses are expected to climb. Reimbursements, notably for the Welfare to Work Program and the COPS Program, did not meet expectations. The agreements between the City, the Conservancy and the County for the operation and management of the former City parks stated that the parks would be budget/revenue neutral for the County, but they are not.

#### **RESULTS OF EXIT CONFERENCE**

An exit conference was held on August 15, 2006 with the County's Commissioner of Parks, Recreation and Forestry, Erie County Attorney, Commissioner of Social Services, Chief Executive Officer of the Buffalo Olmsted Parks Conservancy and members of their respective staff. The contents of this report were discussed and there was general agreement with the findings and recommendations for the period covered by this report.

With regard to the financial review they stated that the audit covered an early snapshot of the 15 year agreement and that extenuating circumstances such as the County's budget crisis, resulting in a loss of staff, union issues and New York State's denial of reimbursement for the entire Welfare to Work program had a negative impact on the first full year of operating the City Parks.

They also noted that management has taken action to resolve union issues, obtain approval for reimbursement for all allowable program costs from New York State and implement some of the other recommendations noted in the audit.

In accordance with the County's Audit Response System and Procedures, we request that the Commissioner of Parks, Recreation and Forestry prepare a written response to the Erie County Legislature with copies to the County Executive and this Office, concerning the findings and

recommendations by September 15, 2006.

**ERIE COUNTY COMPTROLLER'S OFFICE**

cc: Hon. Joel A. Giambra, Erie County Executive  
Hon. Byron Brown, Mayor – City of Buffalo  
The City of Buffalo Common Council  
James Hartman, Director of Budget, Management and Finance  
Angelo Sedita, Commissioner of Parks, Recreation and Forestry  
Johnathan Holifield, Executive Director – Buffalo Olmsted Parks Conservancy