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COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

December 17, 2012

The Honorable
Erie County Legislature
92 Franklin Street – Fourth Floor
Buffalo, New York 14202

RE: First Amendment to Buffalo Cellblock Agreement
IMMEDIATE CONSIDERATION REQUESTED

Dear Honorable Members:

The attached resolution requests authorization for the County to enter into the First Amendment to the 2003 Lock-up Agreement between the County and the City of Buffalo concerning the County's assumption of certain police cellblock responsibilities from the City of Buffalo.

Should your Honorable Body require further information, please contact County Attorney Michael Siragusa in the Department of Law. Thank you for your consideration on this matter.

Sincerely,

Mark C. Poloncarz, Esq.
Erie County Executive

MCP/ms

Enclosure

cc: Michael Siragusa, County Attorney
Sheriff Timothy B. Howard
Thomas Diina, Superintendent of Jail Management

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Department of Law
Re: First Amendment to Buffalo Cellblock Agreement
Date: December 17, 2012

SUMMARY

The attached resolution requests authorization for the County to enter into the First Amendment to the 2003 Lock-up Agreement between the County and the City of Buffalo concerning the County's assumption of certain police cellblock responsibilities from the City of Buffalo. The First Agreement provides for the City's compensation to the County for incurred costs in 2012 for male detainees and to compensate the County through June 30, 2013 under the new agreement for costs incurred for female detainees.

FISCAL IMPLICATIONS

Under the First Amendment the City will pay the County $465,053.09 for services previously provided by the County in 2012 and the City will pay $163.19 per day per female detainee under the new agreement for female detainees.

REASONS FOR RECOMMENDATION

The First Amendment is necessary to adequately receive compensation for services rendered by the County to the City of Buffalo.

BACKGROUND INFORMATION

In July 2003, the County agreed to assume responsibilities for providing the cellblock function for the City of Buffalo. However, over the years, the City's payments for the services did not match expenses. In January 2007 then-Erie County Comptroller Mark Poloncarz issued a review of the cellblock agreement noting this fact and recommending steps be taken to address the funding discrepancy. In May 2011 the County served notice on the City that the County would not renew the agreement. In August 2012, the County served notice of default pursuant to the agreement and in October 2012 the County served written notice of termination of the agreement.

The First Amendment addresses female detainees moving forward and resolves City payments owed to the County for male detainees from early 2012.

CONSEQUENCES OF NEGATIVE ACTION

Failure to approve the First Amendment will result in a lack of revenue inuring to the County.

STEPS FOLLOWING APPROVAL

The County Executive will execute the contract with the City and the Department of Law and Division of Budget and Management will work with the Office of Sheriff and County Comptroller to receive the City payments and make the necessary entries to record the revenue and ensure timely future payments from the City for female detainees.

A RESOLUTION SUBMITTED BY:
DEPARTMENT OF LAW

RE: First Amendment to Buffalo Cellblock Agreement

WHEREAS, pursuant to Agreement dated July 1, 2003, ("Lock-up Agreement") the County and the City of Buffalo set forth the terms by which the County would provide services related to detaining all of the City's pre-arraigned arrestees, both male and female at the Erie County Holding Center; and

WHEREAS, on May 11, 2011, the County served notice upon the City that the County will not renew the Agreement; and

WHEREAS, on August 24, 2012, the County served upon the City a written notice of default pursuant to the terms of the Lock-up Agreement; and

WHEREAS, on October 1, 2012, the County served upon the City a written notice of termination of the Lock-up Agreement effective November 1, 2012; and

WHEREAS, the City and the County, for the benefit of the citizens of the City and County, wish to resolve any differences and enter into this First Amendment to the Lock-up Agreement.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature approves of the First Amendment to the Lock-Up Agreement between the City of Buffalo and County of Erie and authorizes the County Executive to enter into and execute the First Amendment and accept revenue from the City of Buffalo; and be it further

RESOLVED, that certified copies of this resolution be forwarded to the County Executive, the Office of the Comptroller, the Sheriff's Department, the Division of Budget and Management, and the Department of Law.

FIRST AMENDMENT TO LOCK-UP AGREEMENT BY AND BETWEEN THE CITY OF BUFFALO AND THE COUNTY OF ERIE

This Agreement made this _____ day of December, 2012, 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 ("County") and City of Buffalo a municipal corporation of the State of New York having its principal office at City Hall, 65 Niagara Square, Buffalo, New York 14202 ("City"):

WITNESSETH

WHEREAS, pursuant to Agreement dated July 1, 2003, ("Lock-up Agreement") the County and the City set forth the terms by which the County would provide services related to detaining all of the City's pre-arraigned arrestees, both male and female (Detention Services), for quarterly payments of $234,198.50 payable on the first day of the quarter (i.e. $936,794 per annum); and

WHEREAS, in May 2009, the City paid $70,259 as an Adjustment for the cost of services and the quarterly payment was increased by 7.5% to $251,763.39 (i.e. $1,007,053.56 per annum); and

WHEREAS, in September 2010, the City proposed to enter into a transition agreement with the County, which would provide for an October 1, 2011 return to the City of Detention Services for the male pre-arraignment detainees; and

WHEREAS, in September 2010, the County agreed to accept a 17% increase effective July 2010, which increased the quarterly payment to $294,563.17 (i.e., $1,178,252.68 per annum) conditioned upon the City making every effort to take back the Detention Services by October 1, 2011; and

WHEREAS, on May 11, 2011, the County served notice upon the City that the County will not renew the Agreement, which means that all services provided to the City under the agreement, including handling of pre-arraigned males and females, will cease on June 30, 2013; and

WHEREAS, on August 19, 2011, the City advised that it was subject to delays which would require it to rely upon the County to perform Detention Services for pre-arraigned male arrestees for an additional five months beyond October 1, 2011; and

WHEREAS, on April 5, 2012, the City advised that as of May 15, 2012, the City would resume responsibility for the custody of pre-arraigned male arrestees arrested in the City of Buffalo and the City assumed such responsibility for the pre-arraigned male arrestees on May 15, 2012, with the exception of transport services; and

WHEREAS, on August 24, 2012, the County served upon the City a written notice of default pursuant to the terms of the Lock-up Agreement; and

WHEREAS, on October 1, 2012, the County served upon the City a written notice of termination of the Lock-up Agreement effective November 1, 2012 at 12:00 a.m.; and

WHEREAS, the City and the County, for the benefit of the citizens of the City and County, wish to resolve any differences and enter into this First Amendment to the Lock-up Agreement; and

WHEREAS, the County continued to provide transport services to the City for all pre-arraigned male arrestees from the City Cell Block to the arraigning court in the City of Buffalo under the terms set forth in the Lock-up Agreement, and the County agreed to and continued to do so up to and including October 31, 2012; and

WHEREAS, the County continues to provide Detention Services related to detaining all of the City's pre-arraigned female arrestees under the terms set forth in the Lock-up Agreement which services shall terminate on June 30, 2013 unless the parties agree in writing to a new agreement to accommodate the transition of the that function back to the Buffalo Police Department; and

WHEREAS, the County and the City wish to amend the Lock-up Agreement to more accurately reflect the true costs incurred by the County in the handling of City pre-arraigned arrestees, due to the fact that the City has resumed responsibility for the custody of pre-arraigned male arrestees arrested in the City of Buffalo as of May 15, 2012;

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

1. The County agrees to accept and the City agrees to make a payment in the amount of $143,774.81 to the County for providing services related to Detention Services for all of the City's pre-arraigned arrestees, both male and female, for the period of time from April 1, 2012 through May 14, 2012, and

2. the City agrees to tender such payment to the County within fifteen (15) days of the date of this First Amendment to the Lock-up Agreement.

3. The County agrees to accept and the City agrees to pay a payment in the amount of $144,355.15 to the County for providing services related to Detention Services for all of the City's pre-arraigned female arrestees, for the period of time from May 15, 2012 through October 31, 2012, and the City agrees to tender such payment to the County within forty-five (45) days of the date of this First Amendment to the Lock-up Agreement.

4. The County has provided transport services to the City for all pre-arraigned male arrestees from the City Cell Block to the arraigning court in the City of Buffalo under the terms set forth in the Lock-up Agreement, up to and including October 31, 2012, and the City agrees to pay to the County a weekly rate of $7,692.31 from May 29, 2012 through October 31, 2012, for a total payment of $176,923.13, for said transport services of the City's pre-arraigned male arrestees. "Transport Services " have been limited to (a) receiving pre-arraigned male arrestees from the City; (b) the secure detention of pre-arraigned male arrestees until their arraignment; (c) transporting pre-arraigned male arrestees from the City's Cellblock to the respective court within the Buffalo City Court Building through completion of the arraignment; (d) securing the presence of pre-arraigned male arrestees in the respective court through completion of their arraignment. The County has not provided Transport Services to pre-arraigned male arrestees from the City beyond October 31, 2012.

5. The City agrees to tender said $176,923.13 payment referenced in paragraph number 3 above, to the County within forty-five (45) days of the date of this First Amendment to the Lock-up Agreement.

6. The County agrees to continue to provide to the City services related to Detention Services for all of the City's pre-arraigned female arrestees, for the period of time from November 1, 2012 through June 30, 2013, the end of the term of the Lock-up Agreement, and the County agrees to accept and the City agrees to pay to the County a per person daily rate of $163.19 for each female pre-arraigned arrestee delivered to the County by the City. In no event shall the County provide Detention Services to pre-arraigned arrestees from the City beyond June 30, 2013, absent a separate written agreement reached between the two parties for the provision of said services.

7. The full $163.19 daily rate referenced in paragraph 5 above shall be charged to the City by the County for each calendar date a female pre-arraigned arrestee is in the custody of the Erie County Sheriff. The full daily rate shall be charged to the City by the County for any portion of a calendar date the

8. female pre-arraigned arrestee is within the Sheriff's custody, and the full $163.19 daily rate shall be charged for each calendar date that said pre-arraigned female arrestee remains in the custody of the Erie County Sheriff thereafter. There shall not be a pro-rated daily charge.

9. The Erie County Sheriff agrees to invoice the City on a monthly basis for charges incurred as a result of its providing Detention Services for City of Buffalo pre-arraigned female arrestees, and the City agrees to tender payment for such services to the County within thirty (30) days of receipt of said invoices.

10. The parties agree that all other terms and conditions set forth in the original Lock-up Agreement remain in full force and effect, except those which have been amended or modified by the agreed upon terms and conditions set forth herein.

11. If the City fails to make any payment when due as set forth above, the County may, upon written notice, terminate the Agreement, as amended, upon ten (10) days notice and refuse to provide any further Detention Services for the City's female pre-arraigned arrestees.

12. Pursuant to the two-year written notice of termination dated May 11, 2011, issued to the City's Corporation Counsel and Mayor, the County will cease providing Detention Services to the City on June 30, 2013. Upon that date, the City will assume sole responsibility for providing Detention Services to its pre-arraigned female arrestees absent a separate written agreement reached between the parties.

13. The terms of this portion of this First Amendment supersede conflicting terms within the Lock-up Agreement and any and all agreements written or oral that relate to the City pre-arraigned arrestees or other subject matter contained herein.

14. This First Amendment may be modified or amended only by a written instrument signed by duly authorized representatives of the Parties hereto.

15. This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

CITY OF BUFFALO

By: _____
Byron Brown
Mayor

APPROVED AS TO CONTENT:

By: _____
Daniel Derenda
Commissioner
Buffalo Police Department

APPROVED AS TO FORM:

CITY OF BUFFALO

By: _____
Timothy Ball, Esq.
Corporation Counsel

COUNTY OF ERIE

by: _____
Mark C. Poloncarz
County Executive

APPROVED AS TO CONTENT:

by: _____
Timothy B. Howard
Erie County Sheriff

APPROVED AS TO FORM:

COUNTY OF ERIE

by: _____
Michael A. Siragusa, Esq.
County Attorney