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COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

July 10, 2013

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

RE: Second Amendment to Lock-up Agreement by and Between the City of Buffalo and the County of Erie
IMMEDIATE CONSIDERATION REQUESTED

Dear Honorable Members:

The attached resolution requests authorization for the County to enter into the Second Amendment to the 2003 Lock-up Agreement by and between the City of Buffalo and the County of Erie 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:	July 10, 2013

SUMMARY

The attached resolution requests authorization for the County to enter into the Second 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 Second Amendment provides for the City's compensation to the County for incurred costs from July 1, 2013 through December 31, 2013 for the handling by the Erie County Sheriff's Office of pre-arraigned female detainees.

FISCAL IMPLICATIONS

Under the Second Amendment the City will pay the County for services provided by the County in from July 1, 2013 through December 31, 2013, and the City will pay $163.19 per calendar day per female detainee under the new agreement for female detainees.

REASONS FOR RECOMMENDATION

The Second Amendment is necessary to adequately receive compensation for services rendered by the County to the City of Buffalo for the period of time from July 1, 2013 through December 31, 2013.

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 City of Buffalo and the County of Erie, with the approval of this Honorable Body, then entered into The First Amendment to the Lock-up Agreement, dated April 3, 2013, which addressed female detainees moving forward through June 30, 2013 and resolved City payments owed to the County for male detainees from early 2012. This instant Second Amendment merely extends the time period through December 31, 2013 to allow the City of Buffalo additional time to construct facilities needed to handle its pre-arraigned female detainees.

CONSEQUENCES OF NEGATIVE ACTION

Failure to approve the Second 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: Second Amendment to Lock-up Agreement by and between the City of Buffalo and the County of Erie

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, on April 3, 2013, the City and the County, for the benefit of the citizens of the City and County, wished to resolve any differences and entered into the First Amendment to the Lock-up Agreement.

WHEREAS, the City and the County, for the benefit of the citizens of the City and County, wish to continue their relationship pursuant to the terms and conditions set forth in the First Amendment to the Lock-up Agreement as to the County's handling of the City of Buffalo's pre-arraigned female detainees through December 31, 2013, by entering into this instant Second Amendment.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature approves of the Second 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 Second 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.

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

This Agreement made this _____ day of July, 2013, 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, Niagara Square, Buffalo, New York ("City"):

WITNESSETH

WHEREAS, pursuant to the Agreement dated July 1, 2003, 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, and the "First Amendment to Lock-Up Agreement By and Between the City of Buffalo and the County of Erie" dated April 3, 2013 which more accurately reflects the true costs incurred by the County in the handling of City pre-arraigned arrestees ("Lock-up Agreement"); 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, 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 that function back to the Buffalo Police Department; and

WHEREAS, the City and County seek to avoid interruption in their respective detention responsibilities by maintaining the third floor as a temporary holding center exclusive for the County's use; and

WHEREAS, the City desires that the County continue to provide Detention Services related to detaining all of the City's pre-arraigned female arrestees and that such services shall continue through December 31, 2013 unless the parties agree in writing to a new agreement to accommodate the transition of that function back to the Buffalo Police Department; and

WHEREAS, in order to facilitate this uninterrupted service, the City and County seek to extend the current agreement with respect to the detention of pre-arraigned female detainees while a permanent City female cell block is constructed in the basement of the City Court Building; 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 "Second Amendment to the Lock-up Agreement By and Between the City of Buffalo and the County of Erie;" and

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 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 July1, 2013 through December31, 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.

2. The full $163.19 daily rate referenced in paragraph 1 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 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.

3. 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.

4. The parties agree that all other terms and conditions set forth in the 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.

5. 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, immediately and refuse to provide any further Detention Services for the City's female pre-arraigned arrestees.

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

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

8. This Second 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 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