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COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

May 7, 2015

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

RE: Fifth 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 Fifth Amendment to the 2003 Lock-up Agreement 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 A. 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: Fifth Amendment to Buffalo Lock-up Agreement
Date: May 7, 2015

SUMMARY

The attached resolution requests authorization for the County to enter into the Fifth 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 Fifth Amendment to the Lock-up Agreement provides for the City's compensation to the County for incurred costs through June 1, 2015 as a result of the County's handling of the City of Buffalo's pre-arraigned female arrestees/detainees. In addition to the City of Buffalo agreeing to compensate the County of Erie for its handling of City of Buffalo pre-arraigned female arrestees/detainees, the City of Buffalo has also agreed to defend, indemnify and hold the County of Erie harmless against any and all claims brought against it as a result of the services being provided by the County on the City of Buffalo's behalf.

FISCAL IMPLICATIONS

Under the Fifth Amendment the City will pay the County $163.19 per day per pre-arraigned female arrestee/detainee under the new agreement.

REASONS FOR RECOMMENDATION

The Fifth 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 to the Lock-up Agreement addressed female detainees moving forward and resolved City payments owed to the County for male detainees from early 2012. A Second Amendment was entered into which extended the term of the agreement through December 31, 2013 solely with respect to the County's handling of pre-arraigned female arrestees/detainees. A Third Amendment extended the term of the agreement through July 15, 2014. A Fourth Amendment extends the term of the agreement through March 1, 2015. This instant Fifth Amendment extends the term through June 1, 2015.

The City of Buffalo is up-to-date on all payments and have been up-to-date throughout the entire term of the last amendment (Fourth Amendment).

CONSEQUENCES OF NEGATIVE ACTION

Failure to approve the Fifth Amendment will result in a lack of revenue inuring to the County as well as indemnification ramifications.

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: Fifth Amendment to Buffalo Lock-up 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, on April 3, 2013, the City and the County, for the benefit of the citizens of the City and County, desired to resolve any differences and entered into a First Amendment to the Lock-up Agreement; and

WHEREAS, on October 22, 2013, the City and the County entered into a Second Amendment to Lock-up Agreement whereby they agreed to extend the term of the Lock-up Agreement through December 31, 2013; and

WHEREAS, on or about December of 2013 the City and the County entered into a Third Amendment to Lock-up Agreement whereby they agreed to extend the term of the Lock-up Agreement through July 15, 2014; and

WHEREAS, on or about July 16, 2014 the City and the County entered into a Fourth Amendment to Lock-up Agreement whereby they agreed to extend the term of the Lock-up Agreement through March 1, 2015; and

WHEREAS, the City and the County hereby seek to extend the term of the Lock-up Agreement through June 1, 2015 to accommodate the transition of detention services for pre-arraigned female arrestees/detainees back to the Buffalo Police Department.

NOW, THEREFORE, BE IT

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

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

This Amendment made this _____ day of May 2015, 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 female arrestees, and the "Second Amendment to Lock-up Agreement By and Between the City of Buffalo and the County of Erie" extending the terms of the First Amended Agreement through December 31, 2013, and the "Third Amendment to Lock-up Agreement By and Between the City of Buffalo and the County of Erie" slightly modifying and extending the terms of the Second Amended Agreement through July 15, 2014 (collectively referred to as the "Lock-up Agreement"), and the "Fourth Amendment to Lock-up Agreement By and Between the City of Buffalo and the County of Erie" slightly modifying and extending the terms of the Third Amended Agreement through March 1, 2015 (collectively referred to as the "Lock-up Agreement"); 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 March 1, 2015 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 exclusively 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 June 1, 2015 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; 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 "Fifth 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 detention services to the City for all of the City's pre-arraigned female arrestees, for the period of time from March 1, 2015 through June 1, 2015, 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 pre-arraigned female 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 pre-arraigned female 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 pre-arraigned female 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. If payment is not received by the County within sixty (60) days of the City's receipt of the County's invoice, the City shall pay to the County interest on all outstanding amounts due and owing at the rate of 6% per annum. If the City determines that it has been overbilled, *e.g.* further review reveals that an invoiced arrestee was not delivered to the County by the City, after the County has already received payment on that particular invoice, the County agrees to reduce a subsequent invoice by the amount that the City and the County agree were erroneously charged.

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 Lock-up Agreement, as amended, immediately and refuse to provide any further detention services for the City's pre-arraigned female arrestees.

6. The City agrees, at its sole expense, to indemnify, provide a defense for and defend, and hold harmless the County, its present and former officers, employees, and agents, its departments, offices, and units; including but not limited to the Erie

County Sheriff's Office, the Erie County Sheriff, and their present and former officers, deputies, and employees; from and against any and all liability, damages, claims, demands, costs, judgments, fees, attorney's fees, loss, suits and causes of action, brought against any of them, arising out of incidents occurring on or after January 1, 2014 concerning their handling of the City's pre-arraigned female arrestees, pursuant to this Fifth Amendment and all prior amendments.

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

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

9. This Fifth 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 Fifth Amendment on the date first above written.

CITY OF BUFFALO

By: _____
Byron Brown
Mayor

COUNTY OF ERIE

by: _____
Mark Poloncarz
County Executive

APPROVED AS TO CONTENT:

By: _____
Daniel Derenda
Commissioner
Buffalo Police Department

APPROVED AS TO CONTENT:

by: _____
Timothy B. Howard
Erie County Sheriff

APPROVED AS TO FORM:

CITY OF BUFFALO

By: _____
Timothy Ball, Esq.
Corporation Counsel

APPROVED AS TO FORM:

COUNTY OF ERIE

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