

13-5354

EM SUBMISSION NO.: EM1332013

PRESENTED: 9-19-13

ADOPTED: 9-27-13

**RESOLUTION AUTHORIZING AN AGREEMENT WITH GENESEE COUNTY FOR
OPERATION OF THE FLINT HOLDING FACILITY**

BY THE EMERGENCY MANAGER:

The City of Flint Police Department includes a 110-person holding facility with the ability to hold detainees for up to 72 hours; and

The City desires to continue utilizing the holding facility and has sought funding from the State of Michigan to operate the facility; and

The Genesee County Sheriff currently operates the holding facility. The City and the Sheriff have agreed to the terms of a contract for the Sheriff to continue operating the facility. Pursuant to that agreement, the Sheriff will operate the Flint Holding Facility for a contract price not-to-exceed \$2,424,329.00; and


The agreement between the City and County is contingent on the City receiving funding from the State of Michigan to pay the full costs of the contract, and the Sheriff receiving a continued waiver from the Michigan Department of Corrections; and

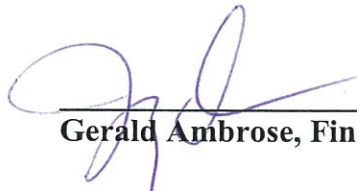
It is the determination of the City that it is in its best interests to enter into a contract with the Sheriff to continue operating the holding facility.

IT IS RESOLVED, that the Emergency Manager authorizes the appropriate City Officials to do all things necessary to enter into the attached agreement with Genesee County for operation of the Flint Holding Facility.

APPROVED AS TO FORM:

APPROVED AS TO FINANCE:


Peter M. Bade, City Attorney

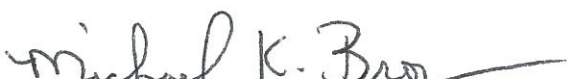

Gerald Ambrose, Finance Director

EM DISPOSITION:

ENACT ☒ _____

REFER TO COUNCIL _____

FAIL _____


Michael K. Brown, Emergency Manager

**CITY OF FLINT AND GENESEE COUNTY
AGREEMENT FOR OPERATION OF FLINT HOLDING FACILITY
BY GENESEE COUNTY SHERIFF
2013-14**

This is an agreement between the City of Flint (hereinafter "City") and Genesee County (hereinafter "County") for operation of the Flint Police Department pre-arraignment holding facility (hereinafter "Holding Facility") by the Genesee County Sheriff (hereinafter "Sheriff") (together, the "Parties").

The Holding Facility is a 110 person pre-arraignment lodging facility located on the second floor of the City of Flint Police Department. The Sheriff shall operate the Holding Facility in accordance with the following terms and conditions:

1. **Applicable Law:** This contract shall be governed by and interpreted according to the laws of the State of Michigan pertaining to contracts made and to be performed in this state.
2. **Arbitration:** County agrees that for all claims, counterclaims, disputes, and other matters arising out of or relating to this agreement, County must request the City's consent to arbitrate within 30 days from the date the County knows or should have known the facts giving rise to the claim, dispute or question.
 - (a) Notice of a request for arbitration must be submitted to the City in writing by certified mail or personal service upon the City Attorney.
 - (b) Within 60 days from the date a request for arbitration is received by the City, the City shall inform County whether it agrees to arbitrate. If the City does not consent, County may proceed with an action in the appropriate court. If the City does consent, then within 30 days of the consent each party shall submit to the other the name of one person to serve as an arbitrator. The two arbitrators together shall then select a third person, the three together shall then serve as a panel in all proceedings. Any decision concurred in by a majority of the three shall be a final binding decision. The City's failure to respond to a timely, conforming request for arbitration is deemed consent to arbitration.
 - (c) The costs of the arbitration shall be split and borne equally between the parties and such costs are not subject to shifting by the arbitrator.
 - (d) The remedy for County's failure to comply with this provision is dismissal of the action.
3. **City Income Tax Withholding:** County and any subcontractor engaged in this contract shall withhold from each payment to its employees the City income tax on all of their compensation subject to tax, after giving effect to exemptions, as follows:
 - (a) Residents of the City: At a rate equal to 1% of all compensation paid to the employee who is a resident of the City of Flint.
 - (b) Non-residents: At a rate equal to 1/2% of the compensation paid to the employee for work done or services performed in the City of Flint.

These taxes shall be held in trust and paid over to the City of Flint in accordance with City ordinances and State law. Any failure to do so shall constitute a substantial and material breach of this contract.

4. **Compensation:** This agreement is contingent on certain conditions described below. In the event the City receives funding, the City shall pay for such services, as set forth herein, a contract price not to exceed \$ 2,427,999 for services as described in the original 3 and 6 page **"Genesee County Sheriff's Office Flint City Lockup Proposals"** and the attachment to this contract titled, **"2013/2014 Proposed Budget"** which governs pricing for this contract term, with the amounts stated in this document superseding any inconsistent amounts stated in the proposals. The contract price includes all anticipated costs of operating the facility including transport, meals, insurance, service fees, and personnel costs. In no event will County be entitled to a greater amount of payment than is set forth in this contract, nor will the County perform services or acquire equipment for which it will not be reimbursed. County expressly recognizes that oral agreements by City officials to pay a greater amount are not binding.

It is understood that, as of the date of approval of this agreement, the State has committed to funding limited to the 2012/13 contract amount of \$2,224,727, and is considering the above contract price, as well as a proposed supplemental personnel appropriation. See attached letter. The Parties agree that if the above contract price is not approved by the State, County will provide, and the City of Flint will accept, a revised budget and services based on the available funding.

- (1) County shall submit itemized invoices for all services provided under this Agreement identifying:
- (a) The date of service
 - (b) The name of person providing the service and a general description of the service provided.
 - (c) The unit rate and the total amount due.

Invoices shall be submitted to:

City of Flint
Accounts Payable
P.O. Box 246
Flint, MI 48501-0246

- (2) Invoices shall be paid by the City within forty-five (45) days of submission of a proper invoice.
- (3) It is solely within the discretion of the City as to whether County has provided a proper invoice. The City may require additional information or waive requirements as it sees fit.
- (4) If, during the period covered by this Agreement, an increase in salary, fringe benefits or other costs is implemented as a result of negotiation between the County and the collective bargaining organization (labor union) of the employees or as a result of rate increases, this Agreement shall be amended to include the increased cost of providing the services covered by this Agreement, and the City agrees to reimburse the County to the extent of the increased costs and available funding.

5. **Contingencies:** This agreement is contingent on the City receiving funding to pay the full costs of this contract from the State of Michigan for the Holding Facility, and the Sheriff receiving a continued waiver from the Michigan Department of Corrections regarding the standards applicable to the Holding Facility. Failure to obtain either contingency shall render this contract void.
6. **Contract Documents:** The invitation for bids, instructions to bidders, proposal, affidavit, addenda (if any), statement of bidder's qualifications (when required), general conditions, special conditions, performance bond, labor and material payment bond, insurance certificates, technical specifications, and drawings, together with this agreement, form the contract, and they are as fully a part of the contract as if attached hereto or repeated herein.
7. **Disclaimer of Contractual Relationship with Subcontractors:** Nothing contained in the Contract Documents shall create any contractual relationship between the City and any Subcontractor or Sub-subcontractor.
8. **Effective Date:** This contract shall be effective upon the date that money is committed by the State of Michigan to pay for the Holding Facility. It shall expire one year after that date.
9. **Certification, Licensing, Debarment, Suspension and Other Responsibilities:** County warrants and certifies that County and/or any of its principals are properly certified and licensed to perform the duties required by this contract in accord with laws, rules, and regulations, and is not presently debarred, suspended, proposed for debarment or declared ineligible for the award of any Federal contracts by any Federal agency. County may not continue to or be compensated for any work performed during any time period where the debarment, suspension or ineligibility described above exists or may arise in the course of County contractual relationship with the City. Failure to comply with this section constitutes a material breach of this Contract. Should it be determined that County performed work under this contract while in non-compliance with this provision, County agrees to reimburse the City for any costs that the City must repay to any and all entities.
10. **Force Majeure:** Neither party shall be responsible for damages or delays caused by Force Majeure or other events beyond the control of the other party and which could not reasonably have been anticipated or prevented. For purposes of this Agreement, Force Majeure includes, but is not limited to, adverse weather conditions, floods, epidemics, war, riot, strikes, lockouts, and other industrial disturbances; unknown site conditions, accidents, sabotage, fire, and acts of God. Should Force Majeure occur, the parties shall mutually agree on the terms and conditions upon which the services may continue.
11. **Good Standing:** County must remain current and not be in default of any obligations due the City of Flint, including the payment of taxes, fines, penalties, licenses, or other monies due the City of Flint. Violations of this clause shall constitute a substantial and material breach of this contract. Such breach shall constitute good cause for the termination of this contract should the City of Flint decide to terminate on such basis.
12. **Liability:** Each party to this Agreement will remain responsible for any claims arising out of that party's performance of this Agreement, as provided for in this Agreement or by law. This Agreement is not intended to either increase or decrease either party's liability to or immunity from tort claims.

This Agreement is not intended to, nor will it be interpreted as giving, either party a right of indemnification either by contract or at law for claims arising out of the performance of this Agreement.

13. **Independent County:** No provision of this contract shall be construed as creating an employer-employee relationship. It is hereby expressly understood and agreed that County is an "independent contractor" as that phrase has been defined and interpreted by the courts of the State of Michigan and, as such, County is not entitled to any benefits not otherwise specified herein.
14. **Insurance/Worker's Compensation:** County shall provide evidence of having acquired the insurance within 10 days of the State appropriation of funding for this Contract. All coverage shall be obtained from insurance companies licensed and authorized to do business in the State of Michigan unless otherwise approved by the City's Risk Manager. Policies shall be reviewed by the City's Risk Manager for completeness and limits of coverage. All coverage shall be with insurance carriers acceptable to the City of Flint. County shall maintain the following insurance coverage for the duration of the contract.
- (a) Commercial General Liability coverage of not less than \$11,000,000 combined single limit with the City of Flint, and including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees and volunteers, named as "Additional Insureds." This coverage shall include: Bodily Injury, Personal Injury, Property Damage, Contractual Liability, Products and Completed Operations, Independent Contractors; Broad Form Commercial General Liability Endorsement, (XCU) Exclusions deleted and a per contract aggregate coverage. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether said other available coverage be primary, contributing, or excess.
- (b) Workers Compensation Insurance in accordance with Michigan statutory requirements. The Parties agree that this coverage is included in the personnel costs in the Proposal.

County shall furnish the City with two certificates of insurance for all coverage requested with original endorsements for those policies requiring the Additional Insureds. All certificates of insurance must provide the City of Flint with not less than 30 days advance written notice in the event of cancellation, non-payment of premium, non-renewal, or any material change in policy coverage. County must provide, upon request, certified copies of all insurance policies. If any of the above policies are due to expire during the term of this contract, County shall deliver renewal certificates and copies of the new policies to the City of Flint at least ten days prior to the expiration date. County shall ensure that all subcontractors utilized obtain and maintain all insurance coverage required by this provision.

15. **Laws and Ordinances:** County shall obey and abide by all of the laws, rules and regulations of the Federal Government, the Constitution of the United States, State of Michigan, Genesee County and the City of Flint, applicable to the performance of this agreement, including, but not limited to, labor laws, and laws regulating or applying to public improvements.

16. **Modifications:** Any modifications to this contract must be in writing and signed by the parties or the authorized employee, officer, board or council representative of the parties authorized to make such contractual modifications under State law and local ordinances.
17. **Non-Assignability:** County shall not assign or transfer any interest in this contract without the prior written consent of the City provided, however, that claims for money due or to become due to County from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.
18. **Non-Disclosure/Confidentiality:** County agrees that the documents identified herein as the contract documents are confidential information intended for the sole use of the City and that County will not disclose any such information, or in any other way make such documents public, without the express written approval of the City or the order of the court of appropriate jurisdiction or as required by the laws of the State of Michigan.
19. **Non-Discrimination:** County shall not discriminate against any employee or applicant for employment with respect to hiring or tenure; terms, conditions, or privileges of employment; or any matter directly or indirectly related to employment, because of race, color, creed, religion, ancestry, national origin, age, sex, height, weight, disability or other physical impairment, marital status, or status with respect to public assistance.
20. **No Third Party Beneficiaries:** There are no third party beneficiaries of this contract.
21. **Notices:** Notices to the City of Flint shall be deemed sufficient if in writing and mailed, postage prepaid, addressed to Flint City Attorney, City of Flint, 1101 S. Saginaw St, Flint, Michigan 48502 and Flint City Clerk, City of Flint, 1101 S. Saginaw Street, Flint, Michigan 48502, or to such other address as may be designated in writing by the City from time to time. Notices to County shall be deemed sufficient if in writing and mailed, postage prepaid, addressed to Genesee County Corporation Counsel, 1101 Beach St., Flint, MI 48502, or to such other address as may be designated in writing by County from time to time.
22. **Records Property of City:** All documents, information, reports and the like prepared or generated by County as a result of this contract shall be shared with the City of Flint at the City's request.
23. **Scope of Services:** County shall provide all of the personnel, materials, labor, equipment, supplies, machinery, tools, cleaning, superintendence, insurance and other accessories and services necessary to provide the service in accordance with the original **3 and 6 page** proposals titled "**Genesee County Sheriff's Office Flint City Lockup Proposal**," the attachment to this contract titled, "**2013/2014 Proposed Budget**" which governs pricing for this contract term, and the special conditions stated within this contract. City will provide the physical space as well as all utilities and general maintenance of the space. If there is any inconsistency between the proposal and the conditions stated in this document or in the other attachments to this document, the terms of the proposal are superseded to the extent of such inconsistency.

County shall perform the work in accordance with the General Conditions and any Special Conditions provided for in this contract and warrants to the City that all materials and equipment furnished under this contract will be new unless otherwise specified, and that all

work will be of good quality, free from faults and defects and in conformance with the contract documents.

24. Special Conditions: The following special conditions shall supersede any and all inconsistent provisions:

(a) **Detainee Booking** – Detainees will be booked at the Holding Facility. Sheriff agrees that he formally takes custody and control over the detainee when the detainee is presented for booking and detainee remains in his custody and control until release. Detainees will be booked using the City's Live Scan equipment. Sheriff shall be solely responsible for supervision and care of detainees while they are under his custody and control. The County's Jail Admission Policy shall govern when the Holding Facility reaches 100 detainees.

(b) **Jail Policy and Procedures** –The County and the Sheriff agree that all detainees will be accepted for holding in the Holding Facility as provided for in this Agreement. Failure to accept detainees as provided by this agreement, except when the population is over 100 as provided in section 24 (a) above, is a material breach of this Agreement and is cause for termination of this Agreement with 30 days written notice. County agrees that, for the duration of the Sheriff's administration of the Holding Facility, the County is legally responsible for costs and damages that may result from incidents related to the provision of these services occurring within the Facility.

(c) **Healthcare** – The Sheriff is responsible for determining whether a detainee needs healthcare, including mental or physical care. If a detainee who does not meet the County's Jail Admission Policy needs healthcare, the Sheriff or his designee will immediately seek consent from an authorized City representative, as designated by the Flint Police Department, to release the detainee from custody. If the City consents, the Sheriff will transport detainee to a health care provider. Upon delivery of the detainee to the provider, the detainee will be discharged from custody. The City is not liable for health care costs for detainees if it has consented to their release from custody.

If a detainee who meets the County's Jail Admission Policy needs healthcare, the Sheriff or his designee will immediately seek consent from an authorized City representative, as designated by the Flint Police Department, to transport the detainee to a health care provider. If the City consents, the Sheriff will transport detainee to a health care provider and ensure proper personnel from the county jail are there to receive custody of the detainee. Upon delivery of the detainee to the provider, the detainee will be discharged from custody of the Holding Facility and transferred to the custody of the Sheriff. The City is not liable for health care costs for detainees if it has consented to their release from custody.

(d) **Use of Holding Facility** – Any person arrested on an original charge within the City may be lodged at the Holding Facility regardless of agency making the arrest. Any person arrested within the City on an outstanding warrant from the 67th District Court or the Seventh Circuit Court may be lodged in the Holding Facility regardless of agency making the arrest.

Any person arrested on a warrant(s) from the 68th District Court may be lodged in the holding facility regardless of the location of arrest or agency making the arrest.

Any person arrested within the County, not within the City limits, on an outstanding warrant from the 67th District Court or the Seventh Circuit Court may be lodged in the Holding Facility, unless the person is arrested on a charge that otherwise meets the County's Jail Admission Policy, in which case the arrested person shall be lodged in the County Jail. This paragraph applies unless the County Jail is under a County Jail Overcrowding State of Emergency described in Public Act 352 of 1982, as amended, that is beyond 14 days as described in MCL 801.56.

Any person arrested in the City on a warrant(s) issued from a jurisdiction other than those listed above may be lodged at the Holding Facility, provided that the warrant holding agency confirms the validity of the warrant and commits to picking up the detainee within 72 hours.

(e) **Performance Objectives** – City and County will develop financial and performance objectives. The objectives shall include, but will not be limited to, determining how many detainees were lodged in the jail who did not meet the County Jail Admission Policy; how many detainees were arraigned; and the reported crime as compared to the period preceding the operation of the Holding Facility. The metrics will be reviewed every 6 months. After review, if necessary, the terms of this contract will be revised so as to facilitate satisfaction of the agreed upon benchmarks.

(f) **Organization Chart** – City and County will develop and continuously update an organization chart which will set forth all corrections staff employees and their positions. In no event will the total number of employees assigned to the Holding Facility fall below the number provided in the Proposals.

(g) **Detainee Reimbursement** – County may seek reimbursement from detainees as allowed by law. The total price of the contract will be reduced by the amount recovered.

(h) **Meeting/Reporting** - The City and County will designate representatives of the Sheriff and Flint Police Departments to confer as needed, but no less than a weekly basis, to ensure the safe and efficient operation of the Holding Facility, as well as compliance with the terms of this Agreement. The Sheriff will provide the Flint Police Department with access to operational data and regularly report on the operation of the Holding Facility.

(i) **Collect Calling Service** - The City may offer detainees collect calling service, including but not limited to installation of phones in the Holding Facility, and the City will recover all revenue generated. The County assumes no responsibility for this service or its maintenance.

(j) **Monitoring System** - The County will continue to maintain the previously installed video monitoring system in the facility.

25. **Severability:** In the event that any provision contained herein shall be determined by a court or administrative tribunal to be contrary to a provision of state or federal law or to be unenforceable for any reason, then, to the extent necessary and possible to render the remainder of this Agreement enforceable, such provision may be modified or severed by such court or administrative tribunal so as to, as nearly as possible, carry out the intention of the parties hereto, considering the purpose of the entire Agreement in relation to such provision. The invalidation of one or more terms of this contract shall not affect the validity of the remaining terms.

26. **Standards of Performance:** County agrees to exercise independent judgment and to perform its duties under this contract in accordance with sound professional practices. The City is relying upon the professional reputation, experience, certification, and ability of County. County agrees that all of the obligations required by it under this Contract shall be performed by the County and its employees and working under County direction and control.
27. **Subcontracting:** No subcontract work, if permitted by the City, shall be started prior to the written approval of the subcontractor by the City. The City reserves the right to accept or reject any subcontractor.
28. **Termination:** Either party may terminate this contract upon giving written notice 2 months in advance. The contract will be automatically terminated should the State of Michigan not provide funds to operate the Holding Facility. The City will immediately notify the County if it learns that the State will not renew funding for the Holding Facility for the purpose of implementing an organized transition or shut down of the Facility.
29. **Time of Performance:** County's services shall commence immediately upon receipt of the notice to proceed and shall be carried out forthwith and without reasonable delay.
30. **Waiver:** Failure of the any of the Parties to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of any term, covenant, or condition. Any waiver or relinquishment of any right or power hereunder at any one or more times shall not be deemed a waiver or relinquishment of that right or power at any other time.
31. **Whole Agreement:** This written agreement and the documents cited herein embody the entire agreement between the parties. Any additions, deletions or modifications hereto must be in writing and signed by both parties.

SIGNATURE PAGE FOLLOWS

HOLDING FACILITY CONTRACT 2013-14
SIGNATURE PAGE

COUNTY OF GENESEE:

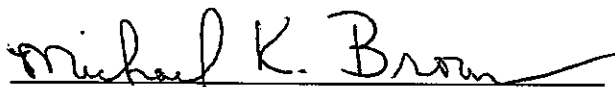
Jamie W. Curtis, Chairperson
Genesee County Board of Commissioners

Date

Robert J. Pickell, Sheriff

Date


CITY OF FLINT, a Michigan Municipal Corp.:



Michael K. Brown
Emergency Manager

9-27-13
Date

APPROVED AS TO FORM:



Peter M. Bade
Chief Legal Officer

09.19.13
Date

Celeste D. Bell
Interim Corporation Counsel

Date