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TO: The Honorable City Council

FROM: David Whitaker, Director 
Legislative Policy Division Staff

DATE: February 14, 2014

RE: **Detroit Detention Center**

The Legislative Policy Division was requested to provide an overview of the interagency agreement between the City of Detroit/Detroit Police Department (DPD) and the Michigan Department of Corrections (MDOC).

In June 2003, the City entered into a Consent Judgment with the Department of Justice regarding conditions of confinement for DPD. This consent judgment requires DPD to make a number of changes to the way arrestees are housed and treated while confined. A decision was made within DPD that it was within the City's best interest to remove itself from the business of housing arrestees. Initially, the City had planned to contract with Wayne County to house arrestees. However, according to DPD in negotiating a deal to provide this service, it was found that MDOC had a more competitive price.

Emergency Manager Orr, on behalf of the City of Detroit, entered into the interagency agreement with MDOC in April 2013¹ to house DPD's detainees.² Until the initiation of the contract with MDOC, the City still housed its arrestees within the police precincts throughout the City. At this time, the City no longer houses any arrestees in the police precincts. It has been indicated that through this interagency agreement, the City has made strides toward the successful completion of the provisions in the consent judgment.

This is a five-year agreement for the leasing of the Detroit Detention Center (DDC) which consists of two (2) buildings of the former Mound Correctional Facility located at 17601

¹ The agreement was amended on August 8, 2013. The discussion of the agreement between MDOC and DPD incorporates these amendments. For completeness, LPD states that City Council has not been asked to approve this interagency agreement. The instant report is being provided at City Council's direction for informational purposes.

² The *Interagency Agreement Between The City of Detroit/Detroit Police Department and The Michigan Department of Corrections for the City of Detroit Detention Center*" and the First Amendment to the Agreement have been attached for reference

Mound Road, Detroit, MI 48212 totaling 56,544 square feet.³ The total five-year cost of the agreement is \$41 Million, or \$8,126,600 per year, that will be paid in monthly installments of \$677,216 per month.⁴ Past due payments will be assessed a late fee of one-half of one percent (0.5%) of the delinquent amount for the first month and one percent (1%) for each succeeding month.⁵ Additionally, DPD shall make a one-time payment of \$650,000 to make physical plant changes. The City is obligated to obtain the minimum level of insurance, including Worker's Compensation Insurance⁶, as required by law. MDOC may approve the use of the City's self-insurance program in place of purchasing insurance where appropriate.⁷ "Each party is responsible for the acts or omissions of their respective employees."⁸

The agreement contains provisions addressing the breach of contract by the City. MDOC is required to provide DPD written notice of the breach and give not less than 30 days to cure the breach.⁹ "The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if MDOC determines in its *sole discretion* that the breach poses a serious and imminent threat to the health or safety of any person or imminent loss, damage, or destruction of any real or tangible personal property."¹⁰ (emphasis added) It should be noted that the agreement contains no provisions that address a breach on the part of MDOC.

The agreement may be terminated in whole or in part by either party with 180 days notice.¹¹ The termination must specify one of the following reasons:

- An Executive determination has been made either that the purpose for which the Agreement was entered into no longer exists or that sufficient funds do not exist for meeting the consideration obligations
- Damage or destruction is so extensive as to exceed 50% of the replacement value of the leased premises
- Termination for convenience
- Breach of a material condition
- Security Concerns
- Non-Appropriation of funds
- Bankruptcy
- Upon an order of a court of competent jurisdiction.

It also provides for the following security, housing, food and maintenance services necessary to operate the facility on a 24 hour, 7 days a week, 365 days a year basis¹²:

³ . It must be noted that the Mound Correctional Facility was originally designed as a "correctional facility" and not as a holding or detention facility. It is not known whether adoptive modifications were used or necessary to accommodate this present use.

⁴ Addendum Section 2.

⁵ Id. The \$650K was payable in two installments, one for \$450K due on August 1, 2013, and \$200K due on September 1, 2013. Both payments should already have been remitted per the term of the agreement.

⁶ Section 65. "No Co-employer/Employee Relationship – DPD must acknowledge that neither this Agreement nor any subsequent amendment creates a co-employer/employee relationship between DPD and the State of Michigan, MDOC, its departments, divisions, agencies, sections, commissions, officers, employees or agents."

⁷ Section 44.

⁸ Section 46.

⁹ Section 47.

¹⁰ Id.

¹¹ Section 49.

¹² Page 3. *Purpose b.*

- Provide complete maintenance of facility, includes janitorial, pest control and exterior grounds maintenance
- Provide physical plant, includes heating, cooling, utilities, illumination, plumbing, telecommunications
- Provides custody staffing, includes correctional officers, housing officers, command positions
- Provides medical staffing,
- Provides food and food services
- Collection of DNA samples from each detainee arrested for a violent felony in accordance with MCL 750.520m(1)(a)
- Additionally, this allows for space for hold equipment and to perform ancillary police work. The following equipment must be provided by DPD: not less than five (5) live scan machines/systems for the printing/booking of arrestees;
- Video arraignment equipment
- Breathalyzer machines
- Audio/video recording equipment
- Stationary security video cameras

Pursuant to the Revised Exhibit 2 *Transfer of Arrestees to MDOC at the DDC*, the Michigan State Police (MSP) Troopers, Motor Carrier Officers or DNR officers are authorized to lodge any person arrested in Wayne County or arrested pursuant to warrant issued by a Wayne County district or circuit court in the DDC. It should be noted that the City of Detroit is bearing 100% of the cost of maintaining and operating the DDC even though MSP will be utilizing the facility for its detainees. While it is indicated that the MDOC is responsible for the detainee's belongings, it is not made clear which entity will be responsible for any medical costs associated with care needed by an arrestee. Nor is it clarified whether the City would be indemnified for any liability stemming from the housing of MSP's arrestees.

This interagency agreement has been entered into by the Emergency Manager and is intended to help the City in its effort to dissolve the consent decree relative to conditions of confinement with the Department of Justice. It has been indicated that this contract is a savings over similar services being offered by Wayne County.

If there are additional questions, please advise.