

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

VOTE

Authorizing the City Manager to execute a License Agreement with the Commonwealth of Massachusetts, owner of 41 Hurd Street, Lowell, MA, which property is under the care and control of the Massachusetts Trial Court Office of Court Management, and to execute all other documents related to this agreement.

The Commonwealth of Massachusetts owns property at 41 Hurd Street, Lowell; and

The City of Lowell desires to enter upon and occupy said real property for the purposes of maintaining the Premises, in good and safe condition, during the period of the License, which is granted to allow the City of Lowell time to pursue an RFP for development of the Premise; and

A License Agreement for such purpose is needed; and

The Commonwealth of Massachusetts is willing to grant access to the City of Lowell onto the property for the purpose maintaining the Premise beginning on July 1, 2023 and ending on June 30, 2024.

BE IT VOTED BY A TWO-THIRDS VOTE OF THE CITY COUNCIL OF THE CITY OF LOWELL, as follows:

That the City Manager be and is hereby authorized to execute a License Agreement with the Commonwealth of Massachusetts, owner of 41 Hurd Street, Lowell, MA, which property is under the care and control of the Massachusetts Trial Court Office of Court Management, all as more fully described in the form, or substantially the form, attached hereto, and to execute all other documents related to this agreement.

**COMMONWEALTH OF MASSACHUSETTS
LICENSE TO OCCUPY STATE-OWNED PROPERTY**

This instrument is a License by and between

the Commonwealth of Massachusetts, acting by and through the Massachusetts Trial Court Office of Court Management ("Licensor") and

the City of Lowell ("Licensee").

Whereas, the Commonwealth of Massachusetts is the owner of certain real property, which is more fully described in Section 2 of this License; and

Whereas, the Licensor is responsible for the care, control, and maintenance of said real property; and

Whereas, Licensee is a municipality of the Commonwealth and desires to enter upon and occupy said real property for the purposes described in Section 3 of this License.

Now, therefore, Licensor hereby grants such entry and use subject to the following terms and conditions:

1. REFERENCE DATA

Date of License: July 1, 2023

Mailing Address of Licensor: Massachusetts Trial Court
Office of Court Management, Legal Department
2 Center Plaza, Suite 540
Boston, MA 02108
Attn: Christopher J. McQuade
TEL NO. (617) 878-0286

Mailing Address of Licensee: City of Lowell

TEL NO. _____

Licensed Premises: 41 Hurd Street, Lowell, MA
Permitted Use: Maintenance of the Premises. Licensee must maintain the Premises in good and safe condition

during the License Term, which is granted to allow the City of Lowell time to pursue an RFP for development of the Premises.

Term of License: From: July 1, 2023
To: June 30, 2024

Consideration: Observance of License terms
 As in attached ISA

2. LOCATION OF PREMISES

Entry and use are limited to the following real property ("Premises"), as shown on the plan attached to this License as **Exhibit 1**.

1.4-acre parcel and the building(s) affixed to it, commonly known as 41 Hurd Street, Lowell.

Licensee's employees, agents and contractors shall have, as appurtenant to the License hereby granted, the exclusive use of any sidewalks, elevators, loading facilities, and entrances and exits from public streets and highways serving the Premises.

3. PURPOSE AND USE

The rights of Licensee under this agreement shall be exercised solely for the following purposes:

The City of Lowell shall have access to the Premises for the purpose of maintaining the Premises, , in good and safe condition during the period of this License.

4. CONDITION OF PREMISES

Licensee acknowledges and agrees that it accepts the Premises in "as is" condition, that Licensor is under no obligation to make any repairs, renovations, or alterations to the Premises except as specifically set forth in this License, and that Licensor has made no representations or warranties regarding the fitness of the Premises for Licensee's intended purpose or use.

5. TERM

The term of this License shall be: One Year

The term of this License shall commence on July 1, 2023 and shall expire on June 30, 2024 unless otherwise terminated earlier in accordance with the terms of Section 18.

The term of this License shall not be extended
 may be extended on the following terms:

6. HOURS OF OPERATION

During the term of this License, Licensee shall be permitted to operate and use the Premises for the purposes set forth in Section 3 at all times.

Weekdays:	from	12:00 AM to 11:59 PM
Saturday & Sunday:	from	12:00 AM to 11:59 PM
State Holidays:	from	12:00 AM to 11:59 PM

7. CONSIDERATION

In consideration of the rights granted to Licensee under this agreement, Licensee shall:

- Perform and observe all of the obligations of Licensee set forth in this License.
- Pay the sums set forth in the attached ISA, as provided therein.

8. PERMITS

This agreement and all obligations hereunder are specifically dependent upon the issuance to the Licensee of all permits and licenses required to operate and use the Premises for the purposes described in this License from those governmental agencies having jurisdiction. It shall be the responsibility of Licensee to obtain any such permits or licenses, at Licensee's sole cost and expense. In the event Licensee is refused any such permit or license, this agreement shall be null and void, with no further obligation by either party to perform. If any such permit or license is revoked or cancelled during the term of this License, it shall be cause for terminating this license immediately as set forth in Section 18(C) hereof.

9. ALTERATION OF THE PREMISES

Licensee shall make no alterations or improvements upon the Premises except as may be specifically permitted in a separate Schedule attached to this License as **Exhibit 2**. If no such Schedule is attached, Licensee shall not make any alterations or improvements upon the Premises after this License has commenced unless Licensee has obtained Licensor's prior written approval, which may be withheld for any reason or for no reason in Licensor's sole discretion.

Any alterations or improvements made by Licensee shall be made in accordance with the terms and conditions established by Licensor, which may include prior approval of plans, insurance coverage and a requirement that Licensee remove any or all of its alterations or improvements upon the expiration or earlier termination of this License. All such alterations or improvements remaining upon the Premises after the expiration of this License shall be subject to the provisions of Section 12 hereof.

10. LICENSEE'S EQUIPMENT

Licensee may bring such vehicles and other equipment upon the Premises as would ordinarily be used to operate and use the Premises for the purposes permitted by this Licensee.

11. UTILITIES

The Premises are not served by any utilities.

Licensor shall pay for the following utility service(s):

electricity heat water

Licensee shall reimburse Licensor for the following:

electricity heat water

Licensee shall contract directly with the supplier of the following:

electricity heat water

In the event Licensor provides any utility system at the Premises or agrees to pay for the cost of any utility service, Licensor makes no representation as to the adequacy of same for the purposes of Licensee, and Licensor shall not be responsible for any interruption in utility service.

12. CONDUCT OF LICENSEE

Non-interference with Licensor's Operations

Licensee shall at all times conduct itself so as not to interfere in any way with the operation of the Premises by the Licensor. Licensee agrees to observe and obey all directives given by duly designated personnel of Licensor.

Compliance With Laws

Licensee shall at all times operate the Premises in accordance with all applicable laws, statutes, ordinances, regulations, permits and licenses.

Repair of Premises

Unless otherwise provided in this License, Licensee assumes full responsibility for making all necessary repairs to the Premises during the term of this License. The Licensee's responsibilities shall include, but not be limited to, the repair of any and all damage or breakage resulting from acts of vandalism or the intentional or negligent acts of the Licensee or others, but excluding damage or breakage caused by employees, agents or invitees of the Licensor. All repairs made by Licensee shall be performed in a manner satisfactory to Licensor and no repair with an estimated cost exceeding \$3,000.00 (three thousand dollars) shall be made without Licensor's prior written approval. Licensor shall have the option to make any repairs for the account of Licensee, in which event Licensee shall reimburse Licensor promptly for any and all costs incurred by Licensor to make such repairs.

Notwithstanding the foregoing, neither Licensee nor Licensor shall be obligated to make any repairs to the structural elements of the Premises or to replace or repair any significant portion of any plumbing, heating, mechanical or other system serving the Premises. In the event such repairs become necessary for any reason and Licensor elects not to make such repairs, Licensee or Licensor may terminate this License as provided in Section 18(a).

Operation of Building Systems

Unless otherwise provided in this License, Licensee assumes full responsibility for the operation and maintenance of all heating apparatus, and other systems located within the Premises or serving the Premises exclusively.

Maintenance and Sanitation

Licensee shall maintain the Premises in a sanitary condition and shall follow all directions of Licensor with regard to the collection and disposal of refuse. Licensee shall also be responsible for providing its own janitorial, snow plowing, and landscaping services, unless otherwise provided in this License.

Security

Licensee shall be responsible for providing, at its sole cost and expense, such security protection or services as Licensor may reasonably require to protect the Premises and Licensee's invitees from injury or damage.

Cost of Operations

Except as otherwise expressly set forth in this License, Licensee shall be responsible for any and all costs and expenses associated with the exercise of its rights under this License and its operations upon the Premises.

Operations Limited to Permitted Uses

Licensee shall not permit any of its employees, agents or invitees to conduct any operations or business upon the Premises except for that permitted by Section 3 of this License.

Hazardous Materials

Without limiting any of Licensee's obligations under this or any other Section of this License, Licensee agrees that it shall not cause any hazardous materials to be used, generated, stored or disposed of on, under or about, or transported to or from the Premises (except for reasonable amounts of Hazardous Materials that are contained in cleaning materials customarily used in connection with the Permitted Uses). Licensee may propose the use of other Hazardous Materials at or within the Premises but may not use, generate, store, dispose of or transport other Hazardous Materials at, to or from the Premises unless Licensee receives prior written approval from the Trial Courts to do so.

If needed, Licensee will obtain EPA ID Number for the Premises if any of the permitted activities will result in hazardous waste generation.

For the purposes of this License, "hazardous materials" shall include, but not be limited to,

substances defined as "hazardous substances", "toxic substances", "hazardous wastes", "hazardous materials", or "oil" in any federal or state statute concerning hazardous materials now or hereafter enacted, including all regulations adopted or publications promulgated thereunder.

Alcoholic Beverages

Unless specifically permitted by the terms of this License, Licensee shall not serve alcoholic beverages upon the Premises, nor allow any of its employees, agents, contractors or invitees to bring or consume alcoholic beverages upon the Premises.

Surrender of Premises

Upon the expiration or earlier termination of this License, Licensee shall immediately vacate and surrender the Premises to Licensor. Licensee shall also remove all of its property from the Premises and restore the Premises to the condition the Premises were in at the commencement of this License, reasonable wear and tear excepted, and, subject further, to any obligation Licensee may have hereunder to make repairs or improvements to the Premises. Upon agreement of the parties, Licensee may abandon all or part of its property in place. In the event any of Licensee's personal property remains on the Premises after the expiration or earlier termination of this License without a written agreement between the parties, said property shall be deemed abandoned and may be retained by Licensor without any compensation to Licensee, or removed and either stored or disposed of by Licensor at the sole cost and expense of Licensee.

13. LIABILITY FOR INJURY OR DAMAGE

Licensee accepts complete liability for the acts, omissions and negligence of the Licensee and its officers, agents, contractors, employees, and invitees while present upon the Premises or while exercising Licensee's rights hereunder. The Licensee shall pay all costs and expenses of Licensor resulting from any injury, loss, claim, action, damage or liability arising out of any act, failure to act or negligence of the Licensee, its officers, agents, contractors, employees or invitees.

14. RISK OF LOSS

Licensee agrees that it shall use and occupy the Premises at its own risk, and the Licensor shall not be liable to Licensee for any loss or damage to vehicles, equipment, fixtures or other personal property of the Licensee that are brought upon the Premises.

15. INSURANCE AND INDEMNIFICATION

Insurance. The Licensor and Licensee each acknowledges that the other is a department of the Commonwealth of Massachusetts or a Municipality of the Commonwealth and that neither shall be required to procure or keep in effect any casualty insurance or public liability insurance with respect to the Premises. Notwithstanding the foregoing, any contractor of Licensee conducting business or performing work upon the Premises shall carry vehicle liability insurance, workers compensation insurance, builders risk insurance, professional liability insurance and such other types of insurance for the benefit of Licensor and/or the Commonwealth of Massachusetts and in such amounts as Licensor may from time to time require in its reasonable judgment. The initial

requirements for insurance are set forth in **Exhibit 4**. Any insurance coverage required by Licensor hereunder shall be by standard policies obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts. In the event Licensee fails to obtain any such insurance coverage, or if any of the required insurance policies is cancelled, it shall be grounds for immediate termination of this License as provided in Section 18(C) of this agreement.

Indemnification. Each of Licensee's contractors and sub-contractors entering the Premises shall indemnify Licensor and the Commonwealth of Massachusetts and save them harmless from and against any and all injury, loss, claim, action, damage, or liability arising out of any act, failure to act, or negligence of Licensee or any of Licensee's Parties.

This indemnity and hold harmless agreement shall include indemnity against all costs, expenses, and liabilities, including without limitation, legal fees, in connection with any such injury, loss, or damage or any such claim, or any proceeding brought thereon or in defense thereon.

16. ASSIGNMENT

The Licensee shall not sell, assign, sublet, mortgage or transfer any interest in this License or any part of the Premises without obtaining, in each instance, the prior written consent of Licensor, which consent may be withheld for any reason or for no reason, or granted upon such conditions as Licensor shall determine, all in its sole discretion.

17. RIGHTS OF LICENSOR AND AGENCY TO ENTER

The Licensor reserves the right and the Licensee shall permit the Licensor or their agents to enter upon the Premises at any time to make repairs, perform maintenance, inspect the Premises, show the Premises to others, monitor compliance with this License or for any other reason.

18. TERMINATION

This License shall expire on the date specified in Section 5 unless extended in compliance with the terms of this License and all other requirements of law or unless terminated earlier under the following conditions:

A. Without Cause. Either Licensee or Licensor may terminate this License by giving written notice to the other party at least thirty (30) calendar days prior to the effective date of termination stated in the notice.

B. For Cause. If, in the opinion of Licensor, Licensee fails to fulfill its obligations, Licensor may terminate this License by giving written notice to the Licensee at least five (5) calendar days before the effective date of termination stated in the notice. The notice shall specify in reasonable detail the nature of Licensee's breach. The notice may also state a period during which the breach may be cured by Licensee, provided that such period shall expire on or before the termination date stated in the notice. In the event the Licensee is given an opportunity to cure its breach (which shall be within the sole discretion of Licensor) and Licensee fails to complete such cure to the

satisfaction of Licensor within the cure period, this License shall come to an end on the termination date stated in the notice.

C. Emergency. In the event Licensor determines that it is necessary to terminate this License or suspend Licensee's rights hereunder immediately in order to prevent injury or damage to persons or property, including the interest of Licensor or the Commonwealth of Massachusetts in the Premises, or to protect state or federal funds, Licensor may terminate this License or suspend Licensee's rights hereunder by providing written notice to Licensee stating the grounds for said termination or suspension. Said notice may be given in the form of electronic mail, telegram, mailgram, hand-carried letter, or other reasonable written means, and this License shall be terminated or suspended, as the case may be, upon delivery of said notice to Licensee.

In the event this License is terminated in accordance with any of the provisions of this Section 18, this License shall come to an end as fully and completely as if the term had expired on the date set forth in Section 5 and Licensee shall vacate and surrender the Premises as provided in Section 12. Upon the expiration or earlier termination of this License, Licensor may, immediately or at any time thereafter, enter upon the Premises or any part thereof and expel the Licensee and those claiming through or under the Licensee and remove their effects, which remedy shall be without prejudice to any other remedies which Licensor may have for breach of this License by Licensee.

In the event this License is terminated by Licensor in accordance with any of the provisions of this Section 18, Licensee shall not be relieved of liability to Licensor for arrears in the License fees, if any, or for any other injury or damage sustained by Licensor as a result of a breach by Licensee of any of the terms or conditions of this License, whether occurring before or after such termination. Licensee expressly waives any right to damages related to such termination. If this License is terminated for any reason that is not the fault of Licensee, then the fee which the Licensee has covenanted to pay, if any, shall be commensurately reduced by the Licensor on a pro rata per diem basis, and Licensee shall receive a refund of any portion of the License Fee that has been prepaid for a period during which the Licensee was denied use and occupancy of the Premises.

19. NO ESTATE CREATED

This License shall not be construed as creating or vesting in Licensee any estate in the Premises, but only the limited right of possession as herein described, and Licensee shall have no right to require specific performance of the obligations of Licensor hereunder.

20. NOTICE

All notices or other communications required or permitted to be given under this License shall, unless otherwise expressly permitted hereunder, be in writing, signed by a duly authorized representative of the party giving the notice and shall be given by hand delivery (including, without limitation, courier, Federal Express, or other overnight delivery service) or mailed by United States certified mail, postage prepaid, return receipt requested. Such notices shall be sent or addressed to Licensor and Licensee at the addresses set forth in Section 1. Notices may also be sent by electronic mail to either party, with delivery receipt requested, to the addresses set forth in Section

1. Licensor or Licensee may, by notice given hereunder, at any time and from time to time, designate a different address Notices served as aforesaid shall be deemed given for all purposes (i) on the date shown on the receipt for such delivery or (ii) as of the date such notice was sent in the event delivery is refused or acceptance could not be obtained.

21. MISCELLANEOUS PROVISIONS

This License may not be modified except in writing, duly executed by both parties.

This License contains the entire agreement of the parties, and there are no other agreements or understandings between the parties regarding the subject matter of this License.

The Licensee, its employees, officers or agents, are not authorized to bind or involve the Licensor in any contract or to incur any liability for or on the part of the Licensor

If any portion of this License is declared to be illegal, unenforceable or void, then all parties to this License shall be relieved of all obligations under that provision; provided, however, that the remainder of this agreement shall be enforced to the fullest extent permitted by law.

No consent or waiver, whether express or implied, by Licensor to or of any breach of the terms of this License by Licensee shall be construed as a consent or waiver to or of any other breach. No waiver of any breach or default or other indulgence shall be effective unless expressed in writing by Licensor.

The captions in this License are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this License or any of the provisions hereof.

This License shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and any and all legal actions brought in connection with this License shall be brought in courts within the Commonwealth of Massachusetts.

This License is to take effect as a sealed instrument.

In the event this License is appended to a Commonwealth of Massachusetts Interdepartmental Service Agreement (ISA) as *Attachment A-Scope of Services and Additional Terms and Conditions*, the terms of this License shall supplement the terms of the ISA, but the terms of the

ISA shall control in the event of a conflict between this License and the ISA.

The following exhibits and attachments are made a part of this License for all purposes:

- X Exhibit 1 - Plan or Diagram of Licensed Premises
- Exhibit 2 - Schedule of Permitted Alterations and Improvements
- X Exhibit 3 - Supplemental Terms and Conditions to License
- X Exhibit 4 - Insurance Requirements for Licensee's Contractors

[Reminder of Page Intentionally Blank]

AGREED AND ACCEPTED

LICENSEE: City of Lowell

Authorized Signature

Title

Print Name

Date

LICENSOR: Commonwealth of Massachusetts, acting by and through its Massachusetts Trial Court Office of Court Management.

Authorized Signature

Title

Print Name

Date

**APPROVED AS TO FORM: Massachusetts Trial Court Office of Court Management,
, Office of the General Counsel**

Authorized Signature

Title

Print Name

Date

Exhibit 4
Insurance Requirements for Licensee's Contractors and Subcontractors

- A. Licensee's contractors and sub-contractors shall keep in force, at Licensee's sole cost and expense during the Term of this License and during such other times as Licensee or those claiming by or through Licensee enters on or uses the Licensed Premises or any part thereof, the following insurance policies, as indicated:
- Comprehensive general liability insurance insuring Licensee against all demands for personal injury or damage to property which may be claimed to have occurred upon or about the Licensed Premises. Said insurance shall be written on an occurrence basis to afford protection in the amount of not less than one million dollars combined single limit for personal and bodily injury and death and for property damage, with a so-called "broad-form" endorsement and contractual liability coverage insuring the performance by Licensee's contractors of the indemnity agreement set forth in Section 15 of this License.
 - Automobile Bodily Injury and Property Damage Liability Insurance covering each vehicle of Licensee entering the Licensed Premises in an amount not less than the compulsory coverage required in Massachusetts.
 - Workers compensation insurance covering Licensee's employees, if any, on the Licensed Premises in such amounts as are required by law.
- AND** such other types of insurance and in such amounts as Licensor may require from time to time.
- B. The insurance coverage required by this Exhibit 4 shall be by standard policies written on an occurrence basis, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts and rated in Best's Insurance Guide (or replacement thereof) as having a general policy holder rating of "A" or better and a financial rating of at least "9" or otherwise acceptable to the Licensor.
- C. Each said insurance policy shall name the Commonwealth of Massachusetts as an additional insured and shall contain a provision stating that such coverage shall not be cancelled, reduced or otherwise materially altered without at least thirty (30) days prior written notice to Licensor.
- D. Licensor acknowledges that Licensee operates a program of self-insurance. Licensee agrees that each contractor and sub-contractor entering upon the Licensed Premises shall provide Licensor with certificates of insurance in compliance with the provisions of this Exhibit 4. Each such contractor and subcontractor shall also be bound by the indemnification provisions herein, including Article 15 above.



Thomas A. Golden, Jr.
City Manager

September 12, 2023

Mayor Sokhary Chau
and
Members of City Council

RE: License Agreement

Dear Mayor Chau and Members of the City Council:

The property located at 41 Hurd Street is owned by the Commonwealth of Massachusetts. The City of Lowell has requested access to the property for the purpose of maintaining the Premises, in good and safe condition during the period of this License, which is granted to allow the City of Lowell time to pursue an RFP for development of the Premise. The Agreement shall expire on June 30, 2024.

The Law Department has prepared the necessary Vote authorizing the City Manager to enter into a License Agreement with the Commonwealth of Massachusetts.

Sincerely,

Thomas A. Golden, Jr.
City Manager

Attachment:

Cc: Corey Williams, City Solicitor
Yovani Baez-Rose, Assistant City Manager/DPD Director

Attachment: License Agreement
Exhibit "A"