

LICENSE AGREEMENT

Agreement made this 11th day of January 2023 by and between the CITY OF PORTSMOUTH, NEW HAMPSHIRE, having a business address at 1 Junkins Avenue, Portsmouth, NH 03801 (the "Licensee"), and the GENERAL SERVICES ADMINISTRATION, as agent for the United States of America (the "Government"), having a business address at the Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222.

WHEREAS, the Government is the fee owner of an approximate 2.1-acre parcel, located at 80 Daniel Street, Portsmouth, NH 03801 (the "Property"); and

WHEREAS, the Property has been vacated by the Government and the Licensee is pursuing acquisition of the Property through a Historic Monument/Historic Surplus Property public benefit conveyance ("Historic PBC") administered by the National Park Service (NPS) in accordance with 40 USC 550(h) and 40 USC 484(k)(3); and

WHEREAS, the Government and Licensee executed a six-month license commencing on June 15, 2022 and ending on December 15, 2022.

WHEREAS, the Licensee requested a 90-day extension of the license (the "Extension Period").

WHEREAS, pursuant to 41 CFR 102-75.944, the Government is willing to grant to the Licensee a license to enter upon and use the Property prior to conveyance for the purposes, and subject to the restrictions, limitations and conditions, specified herein.

NOW THEREFORE, in consideration of the mutual promises, covenants and other good and valuable consideration set forth herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Term. The Government grants to the Licensee, a license, pursuant to which the Licensee and its employees, agents, contractors, and invitees shall have the right to enter upon and use the Property for the Permitted Uses, described herein (the "License"). The term shall commence on the date on which both of the following have been satisfied: (a) the License is executed and (b) the delivery of the insurance certificate(s) required by Section 5 of this License and shall end ninety (90) days after the commencement date except as set forth in paragraph 2(d) herein.
2. Conditions for Conveyance of the Property:
 - a. The Licensee shall provide the Government with a milestone schedule of activities to be completed during the Extension Period upon execution of the License including, but not limited to:

- i. Activities associated with the review of financial materials to inform the final Historic PBC application
 - ii. Any additional activities associated with the completion of outstanding Historic PBC application materials
 - iii. Required City Council review dates to submit the final Historic PBC application
 - iv. Projected date of final Historic PBC application submittal; and
 - v. NPS review period of the final Historic PBC application
- b. The Licensee shall provide the Government with an update on the status of its Historic PBC application to the NPS 30 days from the License commencement date, and every 30 days thereafter. The Government agrees to review the Licensee's presentation within 15 days of presentation and determine, in consultation with NPS, whether to continue towards a PBC conveyance.
- c. If the Licensee fails to provide sufficient evidence of progress in pursuing a Historic PBC, the NPS may cease to support the Historic PBC process.
- d. In the event the Licensee fails to submit a final Historic PBC application by the end of the Extension Period, or at any time in which the NPS ceases to support the Licensee's Historic PBC during the term of the License, no further extensions will be granted and the Government will proceed directly to a competitive sale of the Property.

Permitted Uses. The Licensee may use the Property to conduct the work necessary to operate, protect and maintain the Property and activities required to inform and advance the Licensee's application to acquire in accordance with 40 USC 550(h), 40 USC 484(k)(3) and 40 USC 484. The Permitted Uses allowed by this License shall include all inspections, measurements, surveys, engineering and environmental studies, utilities investigations, zoning and architectural studies, title investigations and other such reports, tests and investigations that Licensee deems appropriate. If the work shall include any intrusive investigations, the Licensee shall provide to the Government a scope of work which shall include: (a) the specific location(s) of any proposed sampling activities; (b) the purpose and nature of the sampling; (c) the identity of contractors and staff who will be performing the work for security purposes; a copy of the work plan (the Work Plan). The Work Plan shall be reviewed, and any comments or further requirements that the Government has with respect to such Work Plan shall be provided to the Licensee within five (5) days following the Government's receipt of Work Plan. If the Government provides no comments within five days of receipt, the work set forth in the Work Plan shall be deemed approved

3. Additional Permitted Use: Licensee may use all exterior parking spaces on the Property for any parking related purpose, including the use of the spaces by private parties or members of the public, for which Licensee may collect parking fees. Proceeds from

parking fees shall be used solely for the purposes of utilities and operational expenses, as set forth in Paragraph 5. In the event any net revenues are derived from the Additional Permitted Use, the City agrees to remit such net revenues to the Government.

4. Changes or Alterations. Any changes or alterations proposed by the Licensee must be approved in writing by the Government prior to the initiation of the work. These changes or alterations must be reviewed by the New Hampshire State Historic Preservation Office (SHPO). Costs for changes or alterations to the Property shall be the sole responsibility of the Licensee and no reimbursement for these approved changes or alterations will be given to the Licensee. Any changes or alterations approved in accordance with this section will be made by bonded and licensed entities and will comply with local building codes, inspections, and permits
5. Utilities, Operational Costs, and Capital Expenses. Licensee shall be responsible for and shall pay in full for any and all costs and expenses arising from the operation of the Property, including but not limited to utilities and utility bills including gas, telephone service, electricity, water charges, sewer, security, janitorial services, trash removal, landscaping and snow removal and, capital repairs to building systems (including, but not limited to, roof materials, elevators, HVAC, fire and life safety systems). Costs incurred by the Licensee will not be considered a credit against the purchase price should the Licensee acquire the Property through a Negotiated Sale or public sale as set forth in paragraph 2(c) herein. Costs and expenses for part of a month will be prorated. All payments will be made directly to the appropriate provider.
6. Access. Upon execution of the License, the Government shall provide the Licensee with copies of the appropriate keys, key cards, and any additional materials associated with access to, and operation of, the Property. The Licensee agrees to furnish the Government with duplicate keys, key cards, and any additional materials associated with access upon execution of this agreement.
7. Site Conditions. Throughout the Term of this License, Licensee shall, at its sole cost and expense and at no cost or expense to the Government promptly repair or replace any property of the Government damaged or destroyed by the Licensee incident to Licensee's operation, use and occupation of the Property. The Government shall provide the Licensee, upon request, with a copy of all site plans, mappings, and drawings in its possession that show the existence and location of all public and/or private subsurface utilities at the Property.
8. Sole Risk: Indemnity. The exercise of the rights herein contained shall be at the sole risk of the Licensee. Licensee shall indemnify, defend, and hold Government and

Government's agents, officers, and employees harmless from any and all third-party claims for losses, damages, costs, expenses (including attorney's fees), statutory fines or penalties, actions, or claims for personal injury (including death), damage to property, or other damage or financial loss of whatever nature, in any way arising out of or in connection with this License, with Licensee's exercise of its rights under this License, and with Licensee's activities on the Property pursuant to this License within the scope and limit (\$1,000,000) of the City's indemnity coverage under the New Hampshire Public Risk Management Exchange (Primex). Except, however, that Licensee shall not indemnify the Government for any and all losses, damages, costs, expenses (including attorney's fees), statutory fines or penalties, or actions of whatever nature in any way arising out of or in connection with: (a) any third-party claims for personal injury (including death), damage to property, or other damage or financial loss related to the condition of the Property, including the presence of hazardous substances (as that term is commonly defined under relevant environmental laws) in the soil, air, structures, or surface/subsurface waters that may require investigation, treatment, special handling, or removal from the Property, but unrelated to Licensee's exercise of its rights under this License and (b) any grossly negligent, willful or intentional actions of the Government or its own agents, officers, or employees.

9. Insurance. As a condition of this License, the Licensee, or its designated consultant performing the work associated with the Permitted Uses, shall provide and maintain, at its sole cost and expense, throughout the duration of this License, the following insurance coverage: (i) Comprehensive General Liability Insurance or public entity risk pool insurance for claims arising from bodily injury, personal injury and property damage occurring upon, in or about the Property on an occurrence basis with combined single limit coverage of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate; and (ii) Workers' Compensation Insurance as required by law.

All such insurance shall be issued by insurers duly authorized and licensed or permitted by law to do business in the State of New Hampshire. All such insurance shall provide that coverage may not be canceled without the insured providing twenty (20) days prior written notice to the Government at the address first listed above. Certificates of Insurance evidencing such insurance policies, in a form reasonably acceptable to the Government, shall be attached to this License as Exhibit A.

10. Release. Licensee, by execution of this License, hereby agrees to release the Government from any and all claims and/or damage to persons or property by it arising out of or in any way related to its entry (and that of its employees, agents and contractors) upon the Property, and does hereby forever waive, release, relinquish, remise and discharge the

Government and its agents, employees, successors and assigns from any and all losses, costs or expenses (including reasonable attorneys' fees), damages, demands, liabilities, claims, actions, causes of action, suits, or judgments (collectively, "Claims") whatsoever of every name and nature that arise in connection with such entry, in law and in equity, including without limitation those related in any manner to:

- a. any accident or injury to, or death of, any person, or any damage to property occurring on, in or in the vicinity of the Property, or any part thereof, arising out of the presence in and use by the Licensee and/or its employees and contractors of the Property; or
- b. any condition of the Property or any portion thereof caused by the Licensee or its employees or contractors; or
- c. any failure of the Licensee or its employees or contractors to perform or comply with the terms of this License or the terms of any statute, law, regulation or ordinance affecting the Licensee's use of the Property, which the Licensee, its agents, employees, or contractors ever had, now have or might have (and whether or not asserted) against the Government and its agents, employees, successors or assigns arising from, pursuant to, or bearing any relationship whatsoever to the License or the Property, except only for Claims arising out of the act, omission or gross negligence of the Government.

11. Compliance with Laws. The Licensee shall, at its sole cost and expense, throughout the Term of this License:

- a. obtain and maintain as necessary all permits, licenses and approvals required by any governmental authority with jurisdiction thereof for the use by Licensee, its employees, agents, invitees or licensees of the Property for the Permitted Uses; and
- b. comply with all applicable laws, rules regulations and by-laws of governmental authorities, and with the terms and conditions of all permits, licenses and approvals issued to Licensee in connection with the use by Licensee and its employees and contractors of the Property for the Permitted Uses.

12. Defaults and Remedies. If at any time during the Term of this License, Licensee fails to perform or observe any term, covenant or condition contained in this License to be performed or observed by Licensee, and such failure continues for a period of two (2) days after the Government gives written notice to Licensee specifying the nature of the default claimed (unless such default shall be of such nature that it cannot be completely cured within such two (2) day period and Licensee commences to cure such default during such two (2) day period and thereafter continues curing the same with reasonable

diligence); then, in any such instance, the Government may terminate this License by written notice to Licensee, such termination to be effective on the date specified in such notice.

13. Representations and Warranties of the Parties. Both the Government and the Licensee (each a "Party") represent for themselves that:

- a. each Party has all of the requisite power and authority to deliver this License and, as applicable, the releases and indemnification's contemplated herein.
- b. this License has been duly executed and delivered each Party and, constitutes the legal, valid and binding obligation of each Party enforceable in accordance with its terms.
- c. the execution and delivery of this License by each Party does not, and the consummation of the transactions contemplated by this License and the compliance with its terms, conditions and provisions by each Party will not conflict with or result in a breach of or constitute a default (or an event which might, with the passage of time or the giving of notice or both, constitute a default) under any of the terms, conditions or provisions of any other agreement or instrument to which either Party is a party or by which either Party may be bound or affected, or any judgment or order of any court or governmental department, commission, board, agency or instrumentality, domestic or foreign, or any applicable law rule or regulation.

14. Miscellaneous Provisions.

- a. No Third-Party Beneficiaries. Nothing in this License agreement, expressed or implied, is intended to confer upon any person, other than each of the parties hereto, and assigns of the Licensee, any benefits, rights or remedies under or by reason of this License agreement.
- b. Entire Agreement. This License and the attachments hereto, each of which is hereby incorporated herein, set forth all of the agreements, promises, covenants conditions and undertakings between the parties with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, or conditions, express or implied, oral or written.
- c. Amendment. No waiver or modification of any of the terms of this License shall be valid unless in writing and signed by each of the parties hereto. Failure by any party to enforce any rights under this License shall not be construed as a waiver of such rights, and a waiver by any party of a default hereunder in one or more instances shall not be construed as constituting a continuing waiver or as a waiver of other instances of default.

- d. **No Waiver or Release.** No failure of the Government to exercise or delay by the Government in exercising any right or remedy or option provided for herein shall be deemed to be a waiver of any of the covenants or obligations of the Licensee hereunder or the right of the Government to enforce the same. No forbearance on the part of the Government or any other indulgence given by the Government to the Licensee shall operate to release or in any manner affect the obligations of the Licensee hereunder.
- e. **Partial Invalidity.** In the event any one or more of the provisions contained in this License shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remainder of this License shall not be affected hereby, and each covenant and provision of this License shall be valid and enforceable to the fullest extent permitted by law.
- f. **Governing Law.** The construction and effect of the terms of this License shall be determined in accordance with federal law.
- g. **Notices.** All notices and other communication which is required or permitted by this License shall be in writing and effective if: (a) delivered by personal service, (b) sent by registered or certified first class US mail, postage prepaid, properly addressed, return receipt requested, or (c) by overnight receipt delivery service such as Federal Express, if intended for the Licensee, addressed to at the address first set forth above, and if intended for the Government, addressed to the Director of Property Utilization and Disposal at the address first set forth above. Receipt of a notice by the party to whom the notice is transmitted as provided above will be deemed to have occurred upon receipt in the case of clause (a), five days from the date of mailing in the case of clause (b) and the next business day in the case of clause (c).
- h. **Signature in Counterparts.** This License may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. The parties hereto confirm that any facsimile copy of another party's executed counterpart of this Agreement (or its signature page thereof) will be deemed to be an executed original thereof.

IN WITNESS WHEREOF, the parties hereto have caused this License to be executed as a sealed instrument under federal law on the day and year first written above.

UNITED STATES OF AMERICA
Acting by and through the Administrator of General Services

DocuSigned by:
John Kelly
By: 5AD990642DAB4E1
John E. Kelly, Director
Real Property Utilization & Disposal
Public Buildings Service

CITY OF PORTSMOUTH, NEW HAMPSHIRE

By:  _____

Karen Conard
City Manager

EXHIBIT A

Certificate of Insurance



CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex³) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex³ is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex³ is entitled to the categories of coverage set forth below. In addition, Primex³ may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex³, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex³ Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only, Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex³. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

Participating Member: City of Portsmouth One Junkins Avenue Portsmouth, NH 03801		Member Number: 275	Company Affording Coverage: NH Public Risk Management Exchange - Primex ³ Bow Brook Place 46 Donovan Street Concord, NH 03301-2624		
Type of Coverage	Effective Date (mm/dd/yyyy)	Expiration Date (mm/dd/yyyy)	Limits - NH Statutory Limits May Apply, If Not:		
<input checked="" type="checkbox"/> General Liability (Occurrence Form) Professional Liability (describe) <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence	7/1/2022	7/1/2023	Each Occurrence	\$ 1,000,000	
			General Aggregate	\$ 2,000,000	
			Fire Damage (Any one fire)		
			Med Exp (Any one person)		
<input type="checkbox"/> Automobile Liability Deductible Comp and Coll: \$1,000 <input type="checkbox"/> Any auto			Combined Single Limit (Each Accident)		
			Aggregate		
<input checked="" type="checkbox"/> Workers' Compensation & Employers' Liability	7/1/2022	7/1/2023	<input checked="" type="checkbox"/> Statutory		
			Each Accident	\$2,000,000	
			Disease – Each Employee	\$2,000,000	
			Disease – Policy Limit		
<input type="checkbox"/> Property (Special Risk includes Fire and Theft)			Blanket Limit, Replacement Cost (unless otherwise stated)		
Description: Proof of Primex Member coverage only.					

CERTIFICATE HOLDER:	Additional Covered Party	Loss Payee	Primex³ – NH Public Risk Management Exchange
GENERAL SERVICES ADMINISTRATION as agent for the United States of America Thomas P. O'Neill Jr, Federal Building 10 Causeway St Boston, MA 02222			By: <i>Mary Beth Purcell</i>
			Date: 6/15/2022 mpurcell@nhprimex.org
			Please direct inquires to: Primex³ Claims/Coverage Services 603-225-2841 phone 603-228-3833 fax

EXHIBIT B

Summary of License Agreement Extension Milestones

January 11, 2023

To: John Kelly and John Dugan, GSA

Re: Summary of Tasks and Deliverables – Federal McIntyre Project, Portsmouth, NH

The following is a general summary of the primary tasks, deliverables and projected schedule as shown on the attached *Project Work Plan*.

1. Financial Analysis of Developer's Preliminary Pro Forma – Financial Real Estate Consultant (FREC) will review the Preliminary Pro Forma (PPF) to assess the soundness of the approach, assumptions and accuracy of the PPF. Work will include, but is not limited to, the review of the net leasable space, projected rents, operating expenses, tenant improvements, commissions and financing terms.
2. Compilation and Review of Construction Cost Estimates – The Construction Cost Estimator (CCE) will perform a detailed review of the 50% schematic design set of architectural, structural, and civil drawings and prepare an independent hard construction cost estimate including identification of key cost drivers, escalation and market conditions. The CCE will also perform peer review of the three (3) cost estimates provided to the City.
3. Design and Programmatic Modifications Analysis – The City and Developer's design team professional will collaborate to evaluate design modifications, including but not limited to programmatic changes to land use, value engineering (with input from the CCE), phasing and/or physical design changes to the Community Plan.
4. GSA Check-In – The City and its Development Partner will provide the GSA with updates on the review of the PPF and the construction estimates as well as the range of design modifications being considered to improve the financial feasibility of the project.
5. Value Engineering with Project Team – The CCE will coordinate with the project design team on potential value engineering of the project to reduce construction costs.
6. Scenario Testing for Adjusted Construction Cost Estimates – The FREC will study alternative scenarios with the adjusted construction cost estimates to improve the financial viability of the project.
7. Draft Development Agreement, Contribution Agreement & Ground Lease – The City and its Development Partner will negotiate draft agreements that reflect the preferred plan.
8. Financial Modeling Analysis - Based on the design and programmatic modifications to the project design, the FREC will model a variety of financing options to improve the feasibility of the project.
9. Design Modification (Building, Site and Program) – The project design team will modify as may be necessary the 50% schematic designs to reflect the design and programmatic modifications for the project.
10. GSA Check-In - The City and its Development Partner will provide the GSA with updates on the updated pro forma and construction estimates as well as the design modifications being implemented to improve the financial feasibility of the project.
11. Final Development Agreement, Contribution Agreement and Ground Lease – The City and its Development Partner will negotiate final drafts of the agreements that reflect the preferred plan.

12. NPS Application (Draft) – The City and its Development Partner will compile the required elements of the NPS Application to the Monument Program.
13. Final Development Agreement, Contribution Agreement, Ground Lease and NPS Application – The City and its Development Partner will negotiate final draft of all agreements that reflect the preferred plan and incorporate the agreements into the NPS Application.
14. City Council Presentation & Approval – The final draft of the NPS Application, including all associated agreements and supporting documentation, will be presented to the City Council.
15. NPS Application – Pending approval of the City Council, the final NPS Application will be submitted to the GSA for submission to the NPS.

