

RESOLUTION NO. 04 OF 2018

Moved by: *CAisha Green*

A Resolution authorizing the City of Harrisburg to negotiate and enter into a Lease Agreement between the City of Harrisburg, as tenant, and UPMC Pinnacle Hospital, as landlord, for the use of property located at 1000 Paxton Street, Harrisburg, PA for the Bureau of Police – Traffic Safety Unit.

WHEREAS, the City of Harrisburg (“City”) and UPMC Pinnacle Hospital (“UPMC”), desire to enter into a Lease Agreement, which authorizes the City to use property at 1000 Paxton Street, Harrisburg, PA for an initial one-year (1) term with successive one-year (1) term renewals as needed; and

WHEREAS, the City and UPMC will mutually benefit from the lease arrangement between the parties; and

WHEREAS, the subject property in the Lease Agreement meets the needs of the City’s Traffic Safety Unit as it consists of both office space and garage bays needed for investigative purposes; and

WHEREAS, the City will pay UPMC rent in the amount of One Dollar (\$1.00) per year consistent with the Agreement, the form of which is hereto as Exhibit “A”; and

WHEREAS, the attached Agreement further sets for the specifics of this transaction that will provide the Bureau of Police – Traffic Safety Unity with a facility sufficient for its operation and equipment storage.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG, that the City is authorized to negotiate and enter into a lease agreement with UPMC for the lease of property located at 1000 Paxton Street, Harrisburg, for use as a Traffic Safety Unit facility.

BE IT FURTHER RESOLVED that the Mayor, City Controller and other appropriate City officials are authorized and directed to take all other steps necessary and appropriate to fully execute this resolution.

I second this resolution *[Signature]*

Passed the City Council November 13, 2018
Wanda R. W. Williams
 President of City Council
 Attest *[Signature]*
 City Clerk

| YEAS | NAYS |
|-------------------------|----------------|
| MR. ALLATT | <i>Excused</i> |
| MS. BOWERS | |
| MS. DANIELS | |
| MS. GREEN | |
| MR. MADSEN | |
| MR. MAJORS | |
| MS. WILLIAMS | |

Yeas 6
 Nays 0

- Approved
- Returned to City Council with objections

E x h i b i t “A”

PROFESSIONAL OFFICE LEASE

1. Parties. This Agreement of Lease, made this _____ day of _____, 2018, between, UPMC Pinnacle Hospital (for the purpose of this Lease to be known as "Lessor") and the City of Harrisburg, a Third Class City in the Commonwealth of Pennsylvania with a mailing address of the Reverend Dr. Martin Luther King, Jr. City Government Center, 10 North Second Street, Harrisburg, PA 17101, herein called "Lessee".

2. Premises. WITNESSETH, that Lessor, in consideration of the rents and covenants hereinafter mentioned, does demise and lease unto Lessee, all that certain space consisting of 140 SF office along with use of the restrooms in the showroom and use of the garage bays in Fleet Maintenance, ("Space"), to be used for office space and vehicle inspection, located at 1000 Paxton Street, Harrisburg, Pennsylvania 17104 ("Building"). Lessor also grants to Lessee, during the term of this Lease, the right of the Lessee, his agents, employees, licensees and invitees to have exclusive use of eleven (11) parking spaces to park vehicles upon the parking facilities located adjacent to the building structure.

3. Furniture. Lessor shall provide one (1) desk, two (2) credenzas, one (1) fridge and two (2) file cabinets for use by Lessee throughout the term of the Lease. All furniture provided by Lessor to Lessee shall be returned to Lessor at the end of the Lease term.

4. Term. TO HAVE AND TO HOLD, unto Lessee, subject to the conditions of this Agreement for the term beginning on October 1, 2018 (Lease Commencement) and ending on the 30th day of September 2019. This Lease shall automatically renew for successive one (1) year terms unless either party provides written notice to terminate at least sixty (60) days prior to the expiration of the then current term.

5. Rent.

4.1 Base Rent. IN CONSIDERATION of which, beginning October 1, 2018 (Rent Commencement), Lessee agrees to pay to Lessor for the use of the Space, \$1.00 annually, to be payable on the first day of the Rent Commencement and annually each year thereafter during the renewal terms.

4.2. Full Service Gross Lease. This is a full service gross Lease; all operating costs, Utilities, taxes, and insurance are included with Lessee's payment of Base Rent. Lessee shall pay for its own in suite janitorial, telephone, cable and internet.

6. Late Charge. Any rent not paid within ten (10) days of its due date shall be subject to a two percent (2%) late charge. Payments, when received by Lessor, shall be applied first to delinquent rents and late charges, if any.

7. Place of Payment. The rent reserved shall be promptly paid on the several days and times specified herein without deduction or abatement, unless hereinafter provided to the contrary, at the principal office of Lessor, UPMC Pinnacle, Attn: Corporate Real Estate, PO Box 8700, Harrisburg, PA 17105-8700, or such other address as Lessor may from time to time designate in writing.

8. Holding Over as Renewal. A hold over by Lessee beyond the term of this Lease or any hereinbefore duly authorized additional term, or failure of Lessee to give notice of its

intention to vacate the Space at the end of such term at least 60 days prior to such end of term, shall, at the option of Lessor, be deemed a renewal of this Lease on a month-to-month basis, with the renewal being under and subject to all provisions contained in this Lease..

9. Utilities. Lessor shall pay all utilities and services furnished to or used on the Space, including but not limited to water, gas, oil, heat, electricity, and sewerage, during the Lease term. Lessee shall be responsible for the cost of telephone, cable and internet services provided to the Space.

10. Negative Covenants of Lessee.

- a. Use of Premises. During the term of this Lease, or any extension or renewal thereof, Lessee shall occupy and use the Space only as office space or such other activity as shall be approved in writing by the Lessor;
- b. Prohibited Activities. Lessee shall not do or permit anything to be done upon the Space or any part thereof which would:
 1. Impair or tend to impair the appearance of the Building,
 2. Impair or interfere with or tend to impair or interfere with any services for the proper and economic heating, cleaning, air conditioning or other servicing of the Space or the Building,
 3. Occasion discomfort or inconvenience of occupants of the Building,
 4. Make void or voidable any insurance in force or increase the cost of any insurance,
 5. Make it impossible to obtain fire or other insurance,
 6. Cause or be likely to cause structural damage to the Building or any part thereof,
 7. Constitute a public or private nuisance,
 8. Violate any present or future laws or regulations of any governmental authority;
 9. Violate this lease or any other Agreement between Lessor and Lessee.
- c) Waste, Damage or Injury to Space. No waste, damage, or injury to the Space shall be committed, and at the end of the term, the Space shall be restored, at the option of the Lessor, to the same condition in which it was at the commencement of the term, modified only to the extent previously approved by the Lessor, and the cost of said restoration shall be paid by Lessee, which cost shall be treated as additional rent due and owing under the terms of this Lease. This paragraph is subject to the exceptions of ordinary wear and tear and unavoidable damage by fire, elements, casualty, or other cause or happening not due to Lessee's negligence.

- d) Signs. Lessee shall not place any signs upon the exterior of the Space nor cause any lettering of any kind whatsoever to be placed upon the outside windows of the Space. Lessee may, however, place a sign upon its door. Lessee will be identified by name and business on any sign or directory to be placed outside or inside the Building by Lessor for the purpose of identifying tenants.
- e) Alterations and Improvements. Lessee shall make no alterations, additions, or improvements in or about the Space without Lessor's prior written consent, which shall not be unreasonably withheld. All such work shall be done at such time and in such manner as shall minimize any inconvenience to other occupants of the Building. As a condition precedent to Lessor's consent, Lessee shall deliver to Lessor written plans and specifications for all work and written plans and specifications for all heating, ventilating, and air conditioning. Lessor shall have the right to approve any contractor to be used by Lessee in connection with such work. Lessee shall prevent any lien or obligation from being created against or imposed upon the Building and will discharge all liens and charges for services rendered or materials furnished immediately after said liens occur or such charge becomes due and payable. Any alterations, additions, or improvements made by Lessee and any fixtures installed as part thereof, shall at Lessor's option become the property of Lessor upon the expiration or sooner termination of this Lease; provided, however, that Lessor shall have the right to require Lessee to remove such fixtures or improvements and restore the Space to its original condition at Lessee's cost upon the expiration or sooner termination of this Lease.
- f) Vacation. Lessee shall neither vacate nor desert the Space during the term of this Lease nor permit same to be empty and unoccupied.
- g) Assigning etc., by Lessee. Lessee shall not have the privilege of assigning or subletting the Space, or mortgaging any interest it may have by virtue of this Lease, unless the written consent of Lessor is first obtained.

10. Indemnification and Insurance. During the term of the Lease or any extension or renewal thereof:

- a. Lessor Coverage. Lessor shall carry such insurance on the premises and the improvements thereto as it may be required to carry by the holder of any mortgage to which this Lease may become subordinate, and such additional insurance, if any, as it may deem advisable to carry.
- b. Lessee Coverage. Lessee shall carry such insurance as it deems advisable on its personal property which may be in or upon the Space. Lessor, its employees and agents, shall not be liable for loss of or damage to said personal property from acts, events, conditions or casualty occurring in, on or about the Space whether due to their negligence or not.

11. Lessor's Rights.

- a. Right of Inspection. It is agreed and understood that Lessor, Lessor's duly authorized agents, contractors, and employees may enter the Space upon reasonable notice and at reasonable times during the term, for the purpose of inspecting.
- b. Rules and Regulations. Lessor may from time to time establish reasonable rules and regulations for the safety, care, and cleanliness of the Space, and for the preservation of good order therein. Such rules and regulations shall, when notice thereof is given to Lessee, form a part of this Lease. No rule or regulation shall be arbitrary, but shall be reasonable in every respect. Any and all rules and regulations established by the Lessor shall not be in derogation of the terms of this Lease and in the event of a conflict between such rules and regulations and the provisions of this Lease, the provisions of the Lease shall govern.

12. Responsibility of Lessee.

- a. Maintenance. Lessee shall maintain and keep in good repair the interior of the Space and all portions of the Space not maintained by Lessor, in a clean, orderly and sanitary condition and repair and will be responsible for its in suite janitorial, telephone, cable and internet.
- b. Damages or Injury to Property. All damages or injuries done to the Space by Lessee and/or Lessee's customers, clerks, servants, agents, employees, visitors of Lessee, and individuals for whom Lessee is responsible, other than those caused by ordinary wear and tear, shall be repaired by Lessee at its expense. Lessee covenants and agrees to make such repairs upon twenty (20) days written notice given to Lessee by Lessor, and if Lessee shall neglect to make said repairs or commence to make the same promptly or complete the same within twenty (20) days after receiving such notice, Lessor shall have the right to make such repairs at the expense and cost of Lessee, and the amount thereof may be collected as additional rent accruing for the month following the date of the said repairs, and if said expense is made at the expiration of the term, then the cost so made may be collected by the Lessor as additional rent for the use of the Space during the entire term.
- c. Payment of Judgments, etc. Lessee shall bear, pay and discharge when and as the same become due and payable all final and unappealable judgments and lawful claims for damages or otherwise against Lessor, arising from Lessee's use or occupancy of the Space and will assume the burden and expense of defending all such suits, whether brought before or after the expiration of this Lease, and will protect, indemnify and save harmless Lessor, or Lessor's agents, servants, employees, and the public at large by reason of or on account of the use or misuse of the Space, or

any part thereof, due to the negligence of Lessee and/or Lessee's agents, clerks, servants, employees, visitors, customers, and individuals for whom Lessee is responsible.

- d. Liens. Lessee shall not permit any mechanics' claim or lien, or other liens, to exist or be placed upon the Space or Building, or any other building, addition, improvement or equipment constituting a part thereof, or included or placed therein, arising out of or related to actions of Lessee during the term. If any mechanics' or other liens shall be filed or exist against the Building or any part thereof, or against the leasehold interest in the Space, or against any rent paid or payable hereunder, by reason of work, labor, services or materials supplied or claimed to have been supplied to, for or in connection with the Space at Lessee's request or on its behalf, Lessee shall, within ninety (90) days after notice of the filing thereof cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Lessee shall fail to cause any such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy of Lessor, Lessor may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or bond. Any amount paid by Lessor, plus interest shall be paid by Lessee to Lessor as additional rent, payable upon demand.

13. Responsibility of Lessor.

- a. Common Area Maintenance and Space. Lessor shall maintain the Building and shall keep in good repair, adequately lighted and reasonable free from snow, ice and refuse, the parking lot, sidewalks and all other portions of all common areas serving the Space to include trash removal. Lessor shall also maintain and repair the structural components, including but not limited to the foundations, exterior walls, load bearing walls, floors, support columns and roofs. Lessor shall be responsible for HVAC maintenance to include preventative maintenance, repairs and replacements, general repairs and maintenance to the plumbing and electrical fixtures, building systems and equipment in the Space.
- b. Partial or Total Destruction of Property. In the event that the building or the Space shall be totally or substantially damaged by fire or other casualty or happening, the Lease shall not terminate, but in such event Lessor agrees to repair, restore, or rebuild the Space as the case may be, subject to the availability of insurance proceeds, to its condition immediately prior to such damage or destruction with due diligence and within four (4) months after such damage; and in the event that the Space cannot be repaired, restored, or rebuilt as aforesaid, within such four (4) month period, Lessee's sole remedy shall be the right to cancel and terminate this Lease without further liability on the part of either party.

The rent payable hereunder shall entirely abate in case the Space is substantially destroyed or so damaged as to be rendered untenable, or abate proportionately according to the extent of the injury or damage sustained by the Space, if it is not substantially destroyed but is rendered partially untenable, until the Space shall have been restored, repaired, or rebuilt, as the case may be, and put in proper condition for use and occupancy. Lessor agrees to institute such repairs immediately after such damage and to complete the same with due diligence and within a reasonable time. Partial destruction shall be restored within ninety (90) days from the date of destruction, and complete destruction shall be completely rebuilt within one hundred twenty (120) days from the date of destruction to the extent feasible.

- c. Damage for Interruption of Use. Lessor shall not be liable for any damage, compensation, or claim by reason of inconvenience or annoyance arising from the necessity of making repairs, alterations and/or additions to any portion of the Space, the interruption in the use of the Space, interruption in the availability of utilities, or the termination of this Lease by reason of the destruction of the Space.

15. Remedies of Lessor. If Lessee should remove or prepare to remove, or attempt to remove from the Space before the expiration of the term or at any time during the continuance of this Lease, or if Lessee shall be in default of any installment of rent for the period of twenty (20) days, or should there be a default in any of the covenants or conditions as herein contained, and should Lessee fail to remedy such default within twenty (20) days of written notice, or if Lessee should become insolvent, or make an assignment for the benefit of creditors, or if a petition in bankruptcy is filed by or against Lessee or a Bill of Equity or other proceeding for the appointment of a receiver for Lessee is filed, or if proceedings for reorganization or for composition with creditors under any state or federal law be instituted by or against Lessee, or if the real or personal property of Lessee shall be sold after levy by any Sheriff, Marshal or Constable, then in that event, rent for the unexpired portion of the then current term of this Lease, at the rate which is then due and collectible under the terms of this Lease, shall immediately become due and payable and shall be collectible by distraint or otherwise, and Lessor shall have the further right in said event, to forfeit and terminate this Lease, the said forfeiture to be effected by giving notice in writing to Lessee herein or to the person then in charge of the Space.

16. Acceptance of Notice to Quit; Dispossession; Waiver of Remedies by Lessee; Waiver of Demand. Lessee hereby accepts notice to quit, remove from, and surrender up possession of the Space to Lessor at the expiration of the term hereof, whenever it may be determined. On failure to pay rent due for thirty (30) business days, or upon breach of any other condition of this Lease and after thirty (30) business days

written notice thereof, despite the distraint, Lessee shall be a nontenant, subject to dispossession by Lessor, with release of error and of damages, and Lessor may reenter the premises and dispossess Lessee without thereby becoming a trespasser. Lessee hereby waives the benefit(s) of all exemption laws of this Commonwealth that now are in force or may hereinafter be in force, or in any action or actions that may accrue on this Lease, and in any distress or distresses that may be made for collection of the whole of said rent, or any part thereof. Lessee also waives the benefit of stay of execution, inquisition, extension, right of appeal, certiorari and all errors, in all proceedings arising out of this Lease. Lessee does also hereby waive any and all demand for payment of the rent herein provided for, either on the day due or on any other day, either on the land itself or in any other place, and agrees that such demand shall not be a condition of reentry or of recovery of possession without legal process or by means of any action or proceeding whatsoever.

17. Confession of Judgment. If rent and/or charges hereby reserved as rent shall remain unpaid for thirty (30) days beyond any day when the same ought to be paid, thirty (30) business days after written notice thereof, Lessee hereby empowers any Prothonotary or Attorney of any court of record to appear for Lessee in any and all actions which may be brought for rent and/or the charges, payments, costs and expenses reserved as rent, or agreed to be paid by Lessee and/or to sign for Lessee an agreement for entering into any competent court an amicable action or actions for the recovery of rent or other charges or expenses, or actions for the recovery of rent or other charges or expenses, and in said suit(s) or in said amicable action or action to confess judgment against Lessee for all or any part of the rent specified in this Lease and then unpaid including the rent for the entire unexpired balance of the term of this Lease, and/or other charges, payments, costs and expenses reserved as rent or agreed to be paid by Lessee, and for interest and costs together with reasonable attorneys' fees; and judgment in ejectment as herein provided may be entered concurrently therewith. Judgment may be confessed repeatedly until any deficiency is collected.

18. Ejectment. At the end of said term, whether the same shall be determined by forfeiture or expiration of the term, or upon the breach of any of the conditions of this Lease, Lessee authorizes any attorney of a court of record in Pennsylvania to appear for Lessee in an amicable action in ejectment and confess judgment against Lessee in such action, and Lessee in such event further authorizes the immediate issuance of a Writ of Possession for the same, with Writ of Execution for the costs, and with reasonable attorney's fees for prosecution of such action.

19. Remedies Cumulative. All remedies of Lessor shall be cumulative and concurrent.

20. Possession Defined. Possession of the Space includes the exclusive use of the same, together with the use, in common with any other occupants of the Building, of the hallways, stairs, toilet rooms, parking area, heat, air conditioning, electric, light, and water.

21. Condemnation. In the event that the Space or any part thereof is taken or condemned for a public or quasi-public use, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemner, and rent shall abate in proportion to the square feet of leased space taken or condemned or shall cease if the entire Space is so taken. If a part taken substantially and unreasonably interferes with the function and efficiency of Lessee's business, Lessee may terminate this Lease on the remaining portion of the Space by delivering a fifteen (15) day written notice to Lessor. In any event, Lessee waives all claims against Lessor by reason of the complete or partial taking of the Space, but retains any rights available against the condemning authority for damages suffered by Lessee.

22. Subordination; Assignment by Lessor. The rights and interests of Lessee under this Lease shall be subject and subordinate to any first mortgage that may be placed upon the Space and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements, and extensions thereof. Lessor shall use best efforts to obtain a Non-Disturbance Agreement for the benefit of Lessee from any mortgagee. Any mortgagee may elect to give the rights and interest of Lessee under this Lease priority over the lien of its mortgage. In the event of such election and upon notification by such mortgagee to Lessee to that effect, the rights and interests of Lessee under this Lease shall be deemed to have priority over the lien of said mortgage, whether this Lease is dated prior to or subsequent to the date of said mortgage. Lessee shall execute and deliver whatever instruments may be required for such purposes and in the event Lessee fails to do so within ten (10) days after demand in writing, Lessee does hereby make, constitute and irrevocably appoint Lessor as its attorney-in-fact and in its name, place and stead so to do. Lessor may assign its interest in this Lease or any part thereof only upon written consent of Lessee, and upon consent such assignee shall thereupon be deemed Lessor hereunder.

23. Quiet Enjoyment. Lessee, upon paying the said rent and performing the covenants of this Lease, on its part to be performed, shall and may peaceably and quietly have, hold, and enjoy the Space for the term aforesaid and any herein duly authorized additional term.

24. No Partnership. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third person as creating the relationship of principal and agent or a partnership or joint venture between the parties hereto, it being expressly understood and agreed that no provision contained herein nor any act of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of lessor and lessee.

25. Notice of Termination. Anything heretofore notwithstanding, a written notice that Lessee intends to terminate this Lease shall be delivered to Lessor at least 90 days prior to the end of the term of this Lease or Lessee's inaction shall, at the option of Lessor, result in the renewal of this Lease for a further term of 30 days, and so on from month to

month and the renewal(s) shall be under and subject to all the provisions as contained in this Lease.

26. Subrogation. Notwithstanding anything to the contrary contained in this Lease, Lessee and Lessor hereby release each other from any and all liability or responsibility (to the other or anyone claiming through or under them by way or subrogation or otherwise) for any casualty or other loss or claim which is or reasonably could have been covered by insurance by the party to this Lease suffering the loss or claim.

27. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

28. Lease Contains All Agreements. It is expressly understood by the parties that the whole agreement between them is embodied in this Lease and that no part or items are omitted, unless the same be hereinafter modified by written agreement(s).

29. Successors, etc. This Lease shall be binding upon the parties hereto and their respective successors and/or assigns.

30. Headings No Part of Lease. Any headings preceding the text of the several paragraphs and subparagraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Lease nor shall they affect its meaning, construction or effect.

31. Severability. If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties have caused this Agreement to be executed the day and year first above written.

WITNESS:

LESSOR: UPMC PINNACLE HOSPITALS

WITNESS:

By: _____
THE CITY OF HARRISBURG, LESSEE:

By: _____
Mayor

By: _____
Controller

FORM AND LEGALITY:

Law Bureau

INTER

OFFICE

MEMO

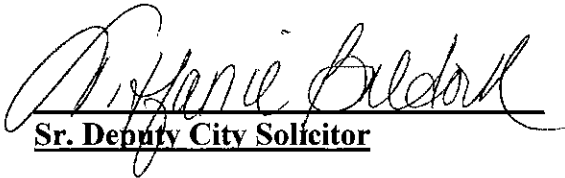
To: HARRISBURG CITY COUNCIL
From: Kirk Petroski, City Clerk
LEGISLATIVE APPROVAL FORM

Date:

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2018 RESOLUTION NO. 04-2018

THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR'S OFFICE ON:


Sr. Deputy City Solicitor

10/19/2018
Date

Requested by Department/Bureau: Police

Department/Bureau Contact Person: Denic Moody

For Action on or before:

The attached was received in the Office of the City Clerk for introduction on

10/23/18

Received by: Chanda Huston

Date: 10/19/2018