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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 24-54211

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

WORCESTER COUNTY SHERIFF'S OFFICE,

Defendant.

CONSENT JUDGMENT

JUDGMENT ENTERED ON DOCKET Feb 29 24
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 68(d)
AND NOTICE SEND TO PARTIES PURSUANT TO THE PRO-
VISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS

notice
sent
2/29/24

INTRODUCTION

WHEREAS, Plaintiff, the Commonwealth of Massachusetts (the “Commonwealth”), acting by and through the Attorney General and the Massachusetts Department of Environmental Protection (“MassDEP”), has filed a Complaint in this action alleging that Defendant, the Worcester County Sheriff’s Office (“Sheriff’s Office”), a Commonwealth agency established pursuant to G.L. c. 34B, §§ 1(b), 4, 12, has violated the Massachusetts Clean Air Act (“Air Act”), G.L. c. 111, §§ 142A-O, and its implementing regulations, 310 C.M.R. §§ 7.00 *et seq.*, at the Worcester County Jail and House of Corrections located at 5 Paul X. Tivnan Drive, West Boylston, Massachusetts (the “Jail”);

WHEREAS, the Complaint alleges that for a two-day period in February, 2021, the Sheriff’s Office disturbed asbestos-containing flooring materials by breaking up and removing floor tiles from a lobby and adjoining hallways of the Main Jail building (“Main Jail”), using a pneumatic grinder to remove the mastic underlying those tiles, transporting the broken tile and mastic in an uncovered wheelbarrow into a front-end loader located outside of the Main Jail lobby, and depositing it in an uncovered dumpster in an exterior area away from the Main Jail, all without engaging licensed asbestos contractors or using the legally required handling, storage, and prior notification procedures that would have prevented a risk of exposure to those present in the Main Jail;

WHEREAS, the Commonwealth’s Complaint seeks injunctive relief and the assessment of civil penalties;

WHEREAS, the Commonwealth and the Sheriff’s Office (collectively, the “Parties”) have reached an agreement to resolve the Commonwealth’s claims against the Sheriff’s Office, including an agreement on the amount of a civil penalty and injunctive relief;

WHEREAS, the Commonwealth and the Sheriff's Office consent to the entry of this Consent Judgment without a trial on any issues and agree that the entry of this Consent Judgment is an appropriate means to resolve this case; and

WHEREAS, the Parties agree that the settlement of this matter has been negotiated in good faith and at arm's length; that implementation of this Consent Judgment will avoid prolonged and complicated litigation between the Parties; and that this Consent Judgment is consistent with the goals of the Air Act, G.L. c. 111, §§ 142A-O, and in the public interest;

NOW, THEREFORE, based on the Joint Motion of the Parties for Entry of this Consent Judgment, and before taking any testimony and without the adjudication of any issue of fact or law except as provided in Section I (Jurisdiction and Venue), it is **ADJUDGED, ORDERED, AND DECREED**, as follows:

I. JURISDICTION AND VENUE

1. The Superior Court has jurisdiction over the subject matter of this action and over the parties to it pursuant to G.L. c. 111, § 142A, G.L. c. 12, § 11D, and G.L. c. 214, §§ 1 and 3. Venue is proper in Suffolk County pursuant to G.L. c. 223, § 5.

2. The Complaint alleges facts, which, if proven, would constitute good and sufficient grounds for the relief set forth in this Consent Judgment.

II. PARTIES BOUND

3. This Consent Judgment shall constitute a binding agreement between the Parties, and the Sheriff's Office consents to its entry as a final judgment by the Court and waives all rights of appeal upon its entry on the docket. If the Superior Court declines to enter this Consent Judgment on any ground except one related to form, this Consent Judgment is voidable at the option of either Party within fourteen (14) days of the Court's decision. If, on the other hand, the

Superior Court determines that substantive modifications to this Consent Judgment are necessary prior to the Court's entry of it, the Parties shall enter into good faith negotiations to discuss the modifications, and this Consent Judgment shall be void unless the Commonwealth and the Sheriff's Office agree otherwise in writing within fourteen (14) days of the Court's decision.

4. The provisions of this Consent Judgment shall apply to and bind the Sheriff's Office, and any person or entity acting by, for, or through the Sheriff's Office, including the Sheriff's Office's managers, directors, officers, supervisors, employees, agents, servants, successors, and assigns, and those persons in active concert or participation with the Sheriff's Office who receive notice of this Consent Judgment.

5. The Sheriff's Office shall provide a true copy of this Consent Judgment to all of its managers, directors, officers, supervisors, employees, agents, and servants whose duties might include compliance with any provision of this Consent Judgment. Specifically, the Sheriff's Office shall provide a copy of this Consent Judgment to any contractor retained to perform work required under this Consent Judgment and shall condition any such contract on the contractor's performance of the work in compliance with the terms of this Consent Judgment.

6. No change or transfer in administration, management, or operation of the Jail, whether in compliance with the procedure of this Paragraph, or otherwise, shall relieve the Sheriff's Office or its managers, directors, officers, supervisors, employees, agents, and/or servants of any obligation under this Consent Judgment. At least thirty (30) days prior to any change or transfer of administration, management, or operation of the Sheriff's Office, the Sheriff's Office shall provide a copy of this Consent Judgment to the proposed transferee or new administrator, manager, or operator and shall simultaneously provide written notice of the prospective change or transfer in administration, management, or operation of the Jail, together

with a copy of the proposed written change or transfer agreement, to the Attorney General in accordance with Section X (Notices) of this Consent Judgment. Any attempt to change or transfer management or operation of the Jail without complying with this Paragraph shall constitute a violation of this Consent Judgment.

7. The Sheriff's Office shall not violate this Consent Judgment and the Sheriff's Office shall not allow its managers, directors, officers, supervisors, employees, agents, or servants to violate this Consent Judgment. In any action to enforce this Consent Judgment, the Sheriff's Office shall not raise as a defense the failure by any of its managers, directors, officers, supervisors, employees, agents, or servants to take any actions necessary to comply with the provisions of this Consent Judgment.

8. In addition to any relief specifically provided in this Consent Judgment, the Sheriff's Office understands and agrees that violations of this Consent Judgment may be punishable by contempt.

III. PAYMENT OF CIVIL PENALTIES

9. If the Commonwealth determines, in its sole discretion, that the Sheriff's Office has not completed the injunctive relief required below in Section IV (Injunctive Relief) by the deadlines contained therein, the Sheriff's Office shall pay a civil penalty, pursuant to the Air Act, G.L. c. 111, § 142A, of one hundred twenty-five thousand dollars (\$125,000.00) within forty-five (45) days of the applicable deadline. In the event that such civil penalty becomes due, the Sheriff's Office shall make the payment by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures, using the following account information:

Commonwealth of Massachusetts, Office of the Attorney General
ABA No. 011075150
Account No. 00088882022
Santander Bank

75 State Street Boston, MA 02109
TIN: 046002284
Reference Docket No. _____

and shall include the following in the payment information: “EPD, *Commonwealth v. Worcester County Sheriff's Office*.” Any payments received by the Commonwealth after 4:00 P.M. (Eastern Time) will be credited on the next business day. At the time of payment, the Sheriff’s Office shall send notice, by electronic mail to Julia Jonas-Day, Environmental Protection Division, at Julia.Jonas-Day@mass.gov, that such payment has been made to the Commonwealth, and shall include the Sheriff’s Office’s Taxpayer Identification Number, the payment information described in this Paragraph, and the amount of the payment.

IV. INJUNCTIVE RELIEF

A. Generally Applicable Terms

10. Unless otherwise expressly provided in this Consent Judgment, the terms used in this Consent Judgment that are defined by the regulations at 310 C.M.R § 7.15 shall have the meaning provided by those regulations.

11. The term “Jail” as used in this Consent Judgment shall include all facilities operated by the Sheriff’s Office at 5 Paul X. Tivnan Drive in West Boylston, Massachusetts.

12. The term “Main Jail” as used in this Consent Judgment shall refer to the building that was constructed in 1973 and contains, among other components, the Jail’s lobby, kitchen, chapel, gymnasium, programs, and units A1, A2, Maxi B, and Maxi C.

13. All written notices and documents required to be issued or posted by the Sheriff’s Office pursuant to the injunctive relief provisions in Sections IV.B. through IV.G. of this Consent Judgment shall be translated into languages other than English, to be determined based on the language fluencies of the Jail’s employees and any nonemployees, where such documents

are required to be distributed to such nonemployees, as necessary to ensure that all such individuals are able to read those written notices and documents.

14. All individuals or companies that the Sheriff's Office retains to conduct asbestos-related work under Paragraphs 22, 31, and 32 of this Consent Judgment shall, at all times during which any of those individuals or companies are engaged in such work, have a valid Department of Labor Standards license to conduct that work.

B. Provision of Medical Examination to Sheriff's Office Employees

15. The Sheriff's Office shall offer and make available to all current and former employees who entered the lobby or adjacent hallways of the Main Jail or any facilities physically connected to the lobby of the Main Jail or adjacent hallways between 3 p.m. on February 22 and 4 p.m. on February 25, 2021, a free, voluntary, and confidential medical examination, meeting the requirements of 29 C.F.R. § 1926.1101, Appendix D, Part 1, and Appendix I, Part IV. This medical examination shall be available for one year from the date on which current and former staff are notified about its availability.

16. Within ten (10) days of the date on which the Court enters this Consent Judgment (the "Entry Date"), the Sheriff's Office shall provide to MassDEP, with a copy to the Attorney General, a written, certified statement (i) listing the names of all current and former employees described in Paragraph 15 to whom it intends to offer and make available the medical examination described in Paragraph 15; (ii) describing how it identified those individuals; and (iii) identifying the number of those individuals for whom it has been unable to locate current mailing addresses and/or electronic mail addresses, and, for any such individuals, the efforts it has made to obtain that current contact information.

17. The Sheriff's Office shall respond in writing within ten (10) days to any reasonable requests by MassDEP for further information related to the certified statement required by Paragraph 16. The Sheriff's Office shall use reasonable and good faith efforts to identify current regular mailing addresses and electronic mail addresses for former employees of the Sheriff's Office covered by Paragraph 15, including, at minimum, review of employment records, review of publicly available records, and attempts to contact those individuals to confirm their mailing addresses using known electronic mail addresses or telephone numbers.

18. Within three (3) days of receiving written approval from MassDEP after its review of the certified statement required by Paragraph 16, the Sheriff's Office shall send by electronic mail, with a receipt confirmation, to the Sheriff's Office electronic mail address for each of the individuals currently employed by the Sheriff's Office, and by regular mail and by certified, return receipt mail to each former employee of the Sheriff's Office for whom it has a current mailing address, as well as through electronic mail if available, a copy of the Notice of Medical Screening contained in Appendix A. Within forty-five (45) days of sending that Notice of Medical Screening, the Sheriff's Office shall provide a written certification to MassDEP, with a copy to the Attorney General, identifying the number of individuals to whom the mailing was deliverable and the number, if any, to whom the mailing was undeliverable.

19. Within one year of the Entry Date, the Sheriff's Office shall provide a written certification to MassDEP, with a copy to the Attorney General, of the number of individuals who undertook the medical screenings, based on the billing it has received for such screenings.

C. Completion of an Asbestos Audit of the Jail

20. The Sheriff's Office shall complete a thorough assessment of the presence of asbestos in the Jail, including all facilities except for the MSF Building, conducted by a licensed

asbestos inspector (“Asbestos Inspector”), *see* 454 C.M.R. § 28.07(5), in order to identify any exposed or accessible asbestos-containing material or suspect asbestos-containing material with which Sheriff’s Office employees, its contractors, visitors, inmates, or other individuals at the Jail could come into contact (“Asbestos Audit”).

21. The MSF Building shall be exempt from this Consent Judgment’s Asbestos Audit requirement provided that it remains unused by the Sheriff’s Office’s employees and contractors and the Jail’s inmates and visitors. This Consent Judgment’s Asbestos Audit requirement also does not require sampling or assessment of the exterior of the Jail’s facilities. MassDEP’s regulations require, nonetheless, that the Sheriff’s Office complete a thorough asbestos survey complying with the requirements of 310 C.M.R. § 7.15(4) prior to demolition or renovation activities at or inside the MSF Building, or any other Jail facility, including sampling and assessment of the exterior of any facility if such exterior is likely to be disturbed.

22. No later than thirty (30) days after the Entry Date, the Sheriff’s Office shall submit to MassDEP, with a copy to the Attorney General, for consideration and approval, the identity and contact information of the Asbestos Inspector it seeks to retain to complete the Asbestos Audit. MassDEP shall notify the Sheriff’s Office in writing whether it approves or disapproves of the proposed Asbestos Inspector. If MassDEP disapproves of the proposed Asbestos Inspector, the Sheriff’s Office shall promptly propose an alternative for MassDEP review and approval no later than ten (10) days from MassDEP’s disapproval.

23. The Sheriff’s Office shall complete the Asbestos Audit, including the report required under Paragraph 27, within ninety (90) days of the Entry Date or of MassDEP’s approval of the Asbestos Inspector, whichever is later.

24. The scope of the Asbestos Audit shall align with requirements for pre-demolition and pre-renovation asbestos surveys under 310 C.M.R. § 7.15(4). At minimum, the Asbestos Audit shall include thorough inspection of the Jail and all Jail “facility components,” *see* 310 C.M.R. § 7.00(1), which are accessible to the Sheriff’s Office’s employees, contractors, visitors, inmates, or other individuals, including material located within storage areas or mechanical spaces, “to identify the presence, location, amount and condition of any [asbestos-containing material] or suspect [asbestos-containing material].” 310 C.M.R. § 7.15(4).

25. The Asbestos Audit does not require sampling in areas that are not accessible, such as behind walls or within other structural components, except that:

- a. all floor tiles and mastic or other adhesive associated with such floor tiles shall either be tested for asbestos or, if not tested, shall be assumed to be asbestos-containing material and shall be handled and disposed of as if they are asbestos-containing material and shall be identified as asbestos-containing material in the Asbestos Audit survey report required in Paragraph 27; and
- b. the interior of the ductwork that draws air from and supplies air to the Main Jail lobby and the interior of the ductwork in other areas of the Jail that are determined, as part of the Asbestos Audit, to have undergone floor-tile removal work since 2016, which work may have involved the disturbance of asbestos-containing material, shall be tested for asbestos-containing dust or other asbestos-containing waste material. If sampling shows asbestos-containing dust or other asbestos-containing waste material in that ductwork, the Sheriff’s Office shall hire a licensed asbestos contractor, *see* 454 C.M.R. § 28.08(1), to abate it.

26. The Asbestos Audit shall include air sampling in any areas where floor-tile removal work was conducted since 2016. To inform that air sampling, the Sheriff's Office shall compile a list of locations where floor-tile removal work was conducted since 2016 and any information available about the type of flooring removed and the process of removal and replacement. The Sheriff's Office shall include that list in the report required by Paragraph 27.

27. The Asbestos Audit shall include a survey report compliant with 310 C.M.R. § 7.15(4)(b) ("Audit Report"). Within ninety (90) days of the Entry Date or of MassDEP's approval of the Asbestos Inspector, whichever is later, the Sheriff's Office shall provide to MassDEP, with a copy to the Attorney General, for consideration and approval, the Audit Report. The Sheriff's Office shall make the Audit Report available for review by Sheriff's Office employees and contractors in accordance with the requirements of Paragraph 35 and for public review by posting it on the Sheriff's Office's external website for at least three (3) years from the date on which MassDEP issues written approval of the Audit Report. The Audit Report shall also be provided to the Division of Capital Asset Management and Maintenance and all licensed asbestos inspectors completing any subsequent asbestos surveys at the Jail. The Sheriff's Office may edit the Audit Report that is posted on its external website as necessary to avoid any security risks, however, the Sheriff's Office shall provide any such changes to MassDEP, with a copy to the Attorney General, for review and approval prior to making such changes.

28. Any areas of the Jail not sampled as part of this Consent Judgment's required Asbestos Audit shall be presumed to contain asbestos and will require completion of an asbestos survey complying with the requirements of 310 C.M.R. § 7.15(4) prior to any demolition or renovation thereof.

D. Institution of an Asbestos Management Protocol for the Jail

29. The Sheriff's Office shall establish a written Asbestos Management Protocol for the Jail, developed by an asbestos consulting services provider meeting the requirements of 454 C.M.R. § 28.07 ("Asbestos Consultant"), which shall incorporate the findings of the Asbestos Audit with regard to locations of known or suspected asbestos-containing material and, at minimum, comply with Paragraphs 31-33, 35, and 36, below, to ensure that all employees and contractors engaged in any maintenance, demolition, renovation, or other work that could disturb asbestos-containing material (friable or nonfriable) or asbestos-containing waste material at the Jail do so in compliance with 310 C.M.R. § 7.15.

30. No later than thirty (30) days after the Entry Date, the Sheriff's Office shall submit to MassDEP, with a copy to the Attorney General for consideration and approval, the identity and contact information of the Asbestos Consultant that it seeks to retain to develop the Asbestos Management Protocol. MassDEP shall notify the Sheriff's Office in writing whether it approves or disapproves of the proposed Asbestos Consultant. If MassDEP disapproves of the proposed Asbestos Consultant, the Sheriff's Office shall promptly propose an alternative for MassDEP review and approval no later than ten (10) days from MassDEP's disapproval.

31. The Asbestos Management Protocol shall require the Sheriff's Office to maintain a contract with one or more licensed asbestos consulting services providers and licensed asbestos abatement contractors, *see* 454 C.M.R. § 28.08(1), and to use those professionals to complete all asbestos surveys and asbestos abatement work at the Jail, respectively, required by 310 C.M.R. § 7.15, in accordance with public bidding procurement requirements.

32. The Asbestos Management Protocol shall require the Sheriff's Office to ensure that:

- a. a licensed asbestos inspector, *see* 454 C.M.R. § 28.07(5), has completed a survey, pursuant to 310 C.M.R. § 7.15(4), prior to any demolition or renovation work at the Jail, including, but not limited to, the removal, disturbance, or breakage of: floor tiles, ceiling tiles, roof, shingles, ductwork, wallboard/joint compound, barrier paper, heating system elements/insulation, and cove base, and any mastic associated with any of the preceding materials;
- b. any known or suspect asbestos-containing material and any asbestos-containing waste material identified by its licensed asbestos inspectors has been properly abated by a licensed asbestos abatement contractor, *see* 454 C.M.R. § 28.08(1), before beginning any demolition or renovation work;
- c. a licensed asbestos inspector (i) conducts an asbestos survey of the Jail, in accordance with the requirements of 310 C.M.R. § 7.15(4), as limited by the exclusions to the Asbestos Audit described in Paragraphs 20 and 21, every three years, with the first survey occurring within three years of the date on which MassDEP issues written approval of the Audit Report, and (ii) inspects, as part of that survey, all exposed and accessible asbestos-containing material at the Jail to evaluate the condition of asbestos-containing material and determine whether abatement of any of that material is necessary;
- d. a licensed abatement contractor commences any abatement work identified as part of the survey required in the preceding Subsection c. within ten (10) days of identification;
- e. a hard and electronic copy (such as through an email attachment or a link to the document on the Sheriff's Office intranet system) of the Asbestos Management

Protocol is provided to all maintenance staff (correctional and civilian) and all employees and contractors who may engage in maintenance, demolition, renovation, or other work that could disturb asbestos-containing material (friable and nonfriable) or asbestos-containing waste material at the Jail, including those who are hired or contracted with after the initial distribution of the Asbestos Management Protocol, required in Paragraph 34.b., at the time that they begin work at the Jail. The Sheriff's Office may omit the attachment containing the Audit Report from the hard copy of the Asbestos Management Protocol provided to such employees and contractors if its inclusion is burdensome due to its length, provided that it replaces that attachment with a written statement explaining that the Audit Report is available as part of the hard copy of the Asbestos Management Protocol available in the Maintenance Office and in the General Counsel's Office and the electronic version is available on the intranet, as described in Paragraph 34.a.;

- f. all maintenance staff (correctional and civilian) and all contractors described in Subsection e. above certify annually (in January, or at the time of beginning work at the Sheriff's Office for staff and contractors hired after January), in writing, that they have read the Asbestos Management Protocol and copies are kept on file of each such certification for a period of ten (10) years; and
- g. a copy of the poster described below in Section IV.F. is posted in the Maintenance Office, all staff locker rooms, and at employee time collection devices to ensure that all staff have notice of the presence of asbestos-containing material in the

Jail, the preventative measures that must occur prior to disturbing any such material, and the asbestos-related resources available to staff.

33. The Asbestos Management Protocol shall also:
- a. include, as its first page, a copy of the poster described in Section IV.F., with the addition of the following text: “This facility has been audited for asbestos. Full results of the asbestos audit are attached to this Protocol.”;
 - b. provide a written summary of the requirements of 310 C.M.R. § 7.15;
 - c. provide detailed written procedures for conducting maintenance work in locations at the Jail known to contain asbestos-containing material and for responding to the unexpected discovery of such material (friable or nonfriable);
 - d. require that all Sheriff’s Office maintenance staff (correctional and civilian) and any other employees that perform maintenance work or demolition and renovation work at the Jail, as well as the Superintendent and Assistant Superintendent of the Jail, complete, on an annual basis, an Asbestos Hazard Emergency Response Act, 15 U.S.C. §§ 2641-2656 (“AHERA”), asbestos-awareness training, *see* 454 C.F.R. § 28.05(8), conducted by a training provider accredited by the Massachusetts Department of Labor Standards;
 - e. identify and provide the name, title, and contact information for the Jail’s Superintendent and/or Assistant Superintendent and Captain assigned to supervise Maintenance, who shall be responsible for compliance with the Asbestos Management Protocol and for receiving notification of any unexpected discovery of asbestos-containing material (friable or nonfriable) or asbestos-containing waste material at the Jail;

- f. identify and provide the contact information for the Division of Capital Asset Management and Maintenance staff to be notified of any unexpected discovery of asbestos-containing material (friable or nonfriable) or asbestos-containing waste material and the planned abatement of any asbestos-containing material at the Jail, prior to the start of any such abatement work;
- g. provide the contact information for the following MassDEP staff to be notified of any disturbance of asbestos-containing material at the Jail: Christa Cronk, Asbestos Program Section Chief, MassDEP-CERO, Christa.Cronk@mass.gov, (774) 571-8023; and
- h. include a copy of the Audit Report as an attachment.

34. Within fourteen (14) days of submission of the Audit Report to MassDEP, as required by Paragraph 27, the Sheriff's Office shall provide to MassDEP, with a copy to the Attorney General, a copy of the Asbestos Management Protocol for review. The Sheriff's Office shall revise the Asbestos Management Protocol in accordance with any written requests for revision made by MassDEP and shall provide a revised version of the written notice to MassDEP, with a copy to the Attorney General, within ten (10) days of receiving any such revision requests from MassDEP or within a longer, reasonable period of time agreed to by the Parties.

35. Within three (3) days of receiving written approval from MassDEP after its review of the Asbestos Management Protocol, the Sheriff's Office shall:

- a. make the Asbestos Management Protocol available for review by placing a hard copy of it in a binder in the General Counsel's Office and in the Maintenance

Office and by posting it in PDF form on the Sheriff's Office's intranet system;
and

- b. provide a hard and electronic copy (such as through an email attachment or a link to the document on the Sheriff's Office intranet system) of the Asbestos Management Protocol to all current maintenance staff (correctional and civilian) and all current employees who may engage in maintenance, demolition, renovation, or other work that could disturb asbestos-containing material (friable and nonfriable) or asbestos-containing waste material at the Jail. The Sheriff's Office may omit the attachment containing the Audit Report from the hard copy of the Asbestos Management Protocol provided to such employees if its inclusion is burdensome due to its length, provided that it replaces that attachment with a written statement explaining that the Audit Report is available as part of the hard copy of the Asbestos Management Protocol available in the Maintenance Office and in the General Counsel's Office and the electronic version available on the intranet, as described in the preceding Subsection a.

36. Within four (4) months of the Entry of Judgment, the Sheriff's Office shall submit to MassDEP, with a copy to the Attorney General, a written certification that all of its maintenance staff (correctional and civilian) and any other employees that perform maintenance work or demolition and renovation work at the Jail, as well as the Superintendent and Assistant Superintendent of the Jail, have, within the previous year, completed the trainings required by Paragraph 33.d. and that those trainings were conducted by a training provider accredited by the Massachusetts Department of Labor Standards, along with supporting documentation from the training provider (e.g., a certification of completion from the trainer).

E. Institution of an Asbestos Code of Conduct for the Jail

37. The Sheriff's Office shall establish an Asbestos Code of Conduct, developed by the Asbestos Consultant, containing policies and procedures to ensure that all employees and contractors at the Jail are aware of the health risks associated with asbestos and how to properly handle known, assumed, or suspected asbestos-containing material (friable or nonfriable) and asbestos-containing waste material in compliance with 310 C.M.R. § 7.15, and to ensure proper preventive maintenance, in compliance with 103 C.M.R. § 920.21, with regard to known or suspected asbestos-containing material at the Jail.

38. The Asbestos Code of Conduct shall be described in a written document, entitled "Worcester County Sheriff's Office Asbestos Code of Conduct, (version date included)" which shall include, at minimum:

- a. a plain language summary of what asbestos is, its appearance, and the health harms it poses; the types of building components at the Jail that are known, assumed, or suspected to contain asbestos based on the findings of the Asbestos Audit; the types of activities that are likely to involve the disturbance of asbestos-containing materials, generally, and at the Jail, specifically; and the MassDEP and Massachusetts Department of Labor Standards regulations governing handling and management of asbestos;
- b. a notice of a forthcoming Asbestos Management Protocol, which will provide more detailed guidance about how to conduct maintenance, demolition, renovation, or other work at the Jail with the potential to disturb asbestos-containing material (friable and nonfriable) or asbestos-containing waste material,

which will be available in the Maintenance Office and in the General Counsel's Office and in a PDF form on the Sheriff's Office's intranet system;

- c. the name and contact information for the Jail's Superintendent and Captain of Maintenance, who shall be responsible for asbestos compliance at the Jail; and
- d. the contact information for the following MassDEP staff to be notified of any disturbance of asbestos-containing material at the Jail: Christa Cronk, Asbestos Program Section Chief, MassDEP-CERO, Christa.Cronk@mass.gov, (774) 571-8023.

39. The Asbestos Code of Conduct shall require that all employees of the Sheriff's Office review the Code of Conduct as part of the "in-service training" conducted by the Sheriff's Office's Training Division on an annual basis.

40. Within forty-five (45) days of MassDEP's approval of the Asbestos Consultant, the Sheriff's Office shall provide to MassDEP, with a copy to the Attorney General, a copy of the proposed Asbestos Code of Conduct for review. The Sheriff's Office shall revise the Asbestos Code of Conduct in accordance with any written requests for revision made by MassDEP and shall provide a revised version of the Asbestos Code of Conduct to MassDEP, with a copy to the Attorney General, within ten (10) days of receiving any such revision requests from MassDEP or within a longer, reasonable period of time agreed to by the Parties.

41. Within three (3) days of receiving written approval from MassDEP after its review of the Asbestos Code of Conduct, the Sheriff's Office shall provide a written and electronic copy of the Asbestos Code of Conduct to all current employees of the Sheriff's Office. The Sheriff's Office shall further make the Asbestos Code of Conduct available for review in

hard copy in a binder in the General Counsel's Office and in the Maintenance Office and in PDF form on the Sheriff's Office's intranet system.

F. Poster Notifying Sheriff's Office Staff of Asbestos Resources

42. Within ten (10) days of the Entry of Judgment, and until the Asbestos Management Protocol required under Section D has been approved and made available, as required by Paragraphs 34 and 35, the Sheriff's Office shall post a one-page poster in the Maintenance Office, the staff locker rooms, and at employee time collection devices to ensure that all staff have notice of the presence of asbestos-containing material in the Jail, the preventative measures that must occur prior to disturbing any such material, and the asbestos-related resources available to staff. This poster shall:

- a. be, at a minimum, 8.5 inches wide by 11 inches tall;
- b. include images documenting the types of material at the Jail that may contain asbestos, alongside the following text: "Materials in this facility that look like this may contain asbestos;"
- c. include the following text: "WARNING: ASBESTOS. Important: Read this before doing any construction, demolition, or maintenance. Asbestos, a naturally occurring mineral fiber that is known to cause cancer and other deadly diseases, has previously been identified at this facility. Many building materials, including wallboard, floor tile, floor tile mastic, window caulk, plaster, roofing shingles, siding shingles, and other materials, may contain asbestos. Before doing any maintenance work with the potential to disturb such suspect asbestos-containing material, you must check with your supervisor. Your supervisor must be able to provide you with the documentation of asbestos testing results, demonstrating that

the material in that location in the facility is not asbestos-containing. If your supervisor cannot provide such information, the material must be sampled by a licensed asbestos inspector or be presumed to be asbestos-containing and abated by a licensed contractor.”

G. Notice to Sheriff’s Office Staff of Disturbance of Known or Assumed Asbestos-Containing Material at the Jail

43. In accordance with the terms of this Section, IV.G., the Sheriff’s Office shall provide a written notice to all staff of all demolition or renovation work at the Jail that is known or assumed to have involved the disturbance of asbestos-containing or suspect asbestos-containing material since 2016 (“Notice of Asbestos Disturbance”).

44. The Sheriff’s Office, at minimum, shall rely on the findings of the Asbestos Audit to identify areas of the Jail in which prior demolition work, renovation work, or other activity, including maintenance work, has likely caused the disturbance of known, assumed, or suspected asbestos-containing material and, further, shall assume that there has been disturbance of asbestos-containing material in all areas of the Jail where floor tile was removed and/or replaced since 2016 but has not been tested for asbestos.

45. For purposes of Paragraphs 43-48, “staff” shall be limited to (a) all employees of the Sheriff’s Office who are or were employed by the Sheriff’s Office and who worked on-site at the Main Jail or any facilities physically connected to the lobby of the Main Jail at any time between February 22 and February 25, 2021, (b) all employees of the Sheriff’s Office who engaged in any work at the Jail that may have involved the disturbance of known, assumed, suspected asbestos-containing material at the Jail since 2016, based on the findings of the Audit and the Sheriff’s Office’s employment and timekeeping records, and (c) all contractors of the Sheriff’s Office who entered the lobby or adjacent hallways of the Main Jail or any facilities

physically connected to the lobby of the Main Jail or adjacent hallways between 3 p.m. on February 22 and 4 p.m. on February 25, 2021.

46. The Sheriff's Office shall use reasonable and good faith efforts to identify current regular mailing addresses and electronic mail addresses for staff who no longer work for the Sheriff's Office. Those efforts shall include, at minimum, review of employment records, review of publicly available records, and attempts to contact workers to confirm their mailing addresses using known electronic mail addresses or telephone numbers.

47. Within ten (10) days of MassDEP's written approval of the Audit Report, the Sheriff's Office shall provide to MassDEP, with a copy to the Attorney General:

- a. the text of the proposed Notice of Asbestos Disturbance that it intends to send to current and former staff. At minimum, that notice shall identify the approximate dates and the locations and type of work at the Jail that is known or assumed to have involved the disturbance of asbestos-containing material and shall describe the nature of asbestos and the health risks that it poses. The Sheriff's Office shall revise the Notice of Asbestos Disturbance in accordance with any written requests for revision made by MassDEP and shall provide a revised version of the notice to MassDEP, with a copy to the Attorney General, within ten (10) days of receiving any such revision requests from MassDEP or within a longer, reasonable period of time agreed to by the Parties; and
- b. a written certified statement (i) listing the names of all current and former staff that it intends to provide the written notice required by this Paragraph; (ii) describing how it identified those staff; and (iii) identifying the number of those staff for whom it has been unable to locate current mailing addresses and/or

electronic mail addresses, and for any such staff, the efforts it has made to obtain that current contact information. The Sheriff's Office shall respond in writing within ten (10) days to any reasonable requests by MassDEP for further information related to that certified statement.

48. Within three (3) days of receiving written approval from MassDEP after its review of both the certified statement described above in Paragraph 47.b. and the Notice of Asbestos Disturbance, the Sheriff's Office shall send by regular and certified, return receipt mail to each of the staff for whom it has a current mailing address, as well as through electronic mail if available, a copy of the Notice of Asbestos Disturbance. Within forty-five (45) days of sending that notice, the Sheriff's Office shall provide a written certification to MassDEP, with a copy to the Attorney General, identifying the number of staff to whom the mailing was undeliverable by either regular or electronic mail.

H. Certification of Compliance with Consent Judgment

49. On an annual basis, for three (3) years from date on which MassDEP issues written approval of the Audit Report, the Sheriff's Office shall submit a written certification to MassDEP, with a copy to the Attorney General, that it has complied with the requirements of the Asbestos Management Protocol and Asbestos Code of Conduct at the Jail, as described in Paragraphs 31, 32, 33, 35, 37, 38, 39, and 41.

I. Certification of Written Submissions to MassDEP and the Attorney General

50. All reports and other written information that Section IV (Injunctive Relief) of this Consent Judgment requires the Sheriff's Office to send to either MassDEP or the Attorney General or both shall contain the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments

to it, and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on personal knowledge or my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

51. The Sheriff's Office shall ensure that each certified statement is signed by the Superintendent of the Jail.

52. Any information provided by Jail pursuant to this Consent Judgment may be used by the Commonwealth in any proceeding to enforce the provisions of this Consent Judgment.

V. SITE ACCESS AND PRESERVATION OF RECORDS

53. MassDEP shall have the right to enter the Jail consistent with the authorization provided in G.L. c. 111, § 142B, for the purpose of conducting any activity related to the enforcement of the terms of this Consent Judgment or for inspections and monitoring compliance with any applicable laws or regulations. During an inspection to monitor compliance with the terms of the Consent Judgment, MassDEP personnel may take videos or photographs of anything at the Jail; may obtain copies of any record or other documentary evidence regarding the Jail or operations at the Jail that is kept at the Jail, or any other location under the control of the Sheriff's Office; and may take samples of any suspect asbestos-containing material or asbestos-containing waste material, as defined by 310 C.M.R. § 7.15(1). Any information, documents, samples, visual or recorded evidence, or materials or tangible evidence gathered by MassDEP during any inspection pursuant to this Paragraph may be used by the Commonwealth in an action to enforce this Consent Judgment or in any other administrative, civil, or criminal enforcement action against the Sheriff's Office or its successor.

54. Unless otherwise specified in this Consent Judgment, in addition to complying with any other applicable local, State, or federal records preservation requirements, until two (2) calendar years after the Sheriff's Office makes all the submissions to MassDEP and the Attorney General required by Section IV (Injunctive Relief) of this Consent Judgment, the Sheriff's Office shall preserve at least one (1) legible copy of all documents in its possession, custody, or control that relate to the performance of the Sheriff's Office's obligations under this Consent Judgment. If the Sheriff's Office retains or employs any agent, consultant, or contractor for the purpose of complying with the terms of this Consent Judgment, then the Sheriff's Office's agreement or contract with the agent, consultant, or contractor shall require such person or persons to provide the Sheriff's Office with a copy of all documents relating to the performance of the Sheriff's Office's obligations under this Consent Judgment. This requirement includes electronic documents. Any copies of documents subject to this requirement may be maintained in an electronic format.

VI. INTEREST AND COLLECTION

55. If any payment required pursuant to this Consent Judgment is late or not made, the Sheriff's Office shall pay interest on any overdue amount for the period of such nonpayment at the rate of twelve percent (12%) pursuant to G.L. c. 231 § 6B, computed monthly, and shall pay all expenses associated with collection by the Commonwealth of the unpaid amount and interest for any period of nonpayment after the payment obligation becomes due, including reasonable attorney's fees.

VII. FORCE MAJEURE

56. Any request to extend the deadlines set forth in Section IV (Injunctive Relief) shall be made in writing to MassDEP, with a copy to the Attorney General, prior to the

expiration of the deadline. Upon receipt of a timely request for an extension under this Paragraph, MassDEP may, in its discretion, grant additional time if it is persuaded that the delay in performance is the result of circumstances beyond the Sheriff's Office's control. MassDEP shall not unreasonably withhold or condition an extension, but, in the event MassDEP does withhold an extension, the Sheriff's Office shall bear the burden of demonstrating that (a) the delay in performance is the result of circumstances beyond its control and (b) the delay could not have been prevented or avoided by the reasonable exercise of due care, foresight, or due diligence on the part of the Sheriff's Office. In its written notice of delay to MassDEP, the Sheriff's Office shall state the anticipated length of delay, the cause of the delay, and the steps or measures it will take to prevent or minimize the delay. The Sheriff's Office shall adopt reasonable measures to avoid or minimize the delay. The Sheriff's Office's failure to comply with the notice requirements of this Paragraph shall constitute waiver of its right to request an extension of time with regard to any delay, and a waiver of any right to relief from the deadlines in Section IV (Injunctive Relief). The Commonwealth will not seek to collect a suspended penalty for an approved period of delay or during the time MassDEP is considering a timely request for an extension under this Paragraph. Except as excused by MassDEP pursuant to this Paragraph, delay on the part of the Sheriff's Office's contractors, subcontractors, or consultants shall be attributable to the Sheriff's Office and financial inability or increased costs shall not constitute a force majeure condition. If the Parties are unable to reach an agreement on differences about a delay by informal negotiation or other mutually agreeable means of dispute resolution, then the Sheriff's Office may seek review of MassDEP's determination in Suffolk Superior Court and the Sheriff's Office shall bear the burden of demonstrating that MassDEP's determination was arbitrary and capricious or otherwise not in accordance with law.

VIII. EFFECT OF CONSENT JUDGMENT

57. Upon compliance with the requirements of this Consent Judgment, (a) this Consent Judgment shall resolve the Sheriff's Office's liability for the specific legal claims alleged against it in the Complaint that arose at least forty-five (45) days prior to the entry of this Consent Judgment, and (b) the Commonwealth shall release the Sheriff's Office for liability for the specific legal claims alleged against the Sheriff's Office in the Complaint that arose at least forty-five (45) days prior to the entry of this Consent Judgment.

58. Nothing in this Consent Judgment, or any permit approval issued by MassDEP relative to the Jail: (a) shall bar any action by the Commonwealth on any legal claim not specifically pleaded in the Complaint or for any violation not revealed to the Commonwealth; (b) shall be deemed to excuse compliance by the Sheriff's Office or any of the persons or entities otherwise bound by this Consent Judgment with any law or regulation; or (c) shall preclude a separate or ancillary action by the Commonwealth to enforce the terms of this Consent Judgment, any permit, or other approval issued by MassDEP relative to the Jail. The Commonwealth expressly reserves all claims for injunctive relief for violation of any of the statutes and regulations referred to in this Consent Judgment, whether related to the specific legal claims resolved by this Consent Judgment or otherwise.

59. Nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Judgment.

IX. MISCELLANEOUS

60. The Sheriff's Office shall pay all expenses, including reasonable attorney's fees and costs incurred by the Commonwealth in the enforcement of this Consent Judgment.

61. The Sheriff's Office waives entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.

62. The titles in this Consent Judgment have no independent legal significance and are used merely for the convenience of the Parties.

63. Massachusetts law shall govern the interpretation and enforcement of this Consent Judgment.

64. In computing any period of time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or State or Federal holiday, the period shall run until the close of business of the next business day.

X. NOTICES

65. Unless otherwise specified in this Consent Judgment, notices and submissions required by this Judgment shall be made in writing by first class mail to the following addresses:

For the Attorney General's Office and the Commonwealth:

Julia Jonas-Day
Tracy Triplett
Assistant Attorneys General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Julia.Jonas-Day@mass.gov
Tracy.Triplett@mass.gov

For MassDEP:

Christa Cronk
Asbestos Branch Chief
MassDEP – CERO
8 New Bond Street
Worcester, MA 01606
Christa.Cronk@mass.gov

For the Worcester County Sheriff's Office:

Kevin M. Gould
General Counsel
Worcester County Sheriff's Office
5 Paul X. Tivnan Drive
West Boylston, MA 01583
kgould@sdw.state.ma.us

or, to such other place or the attention of such other individual as a Party may from time to time designate by written notice to the other Party to this Consent Judgment.

XI. INTEGRATION

66. Except as expressly set forth in this Consent Judgment, this Consent Judgment sets forth all of the obligations of the Parties and represents the complete and exclusive statement of the Parties with respect to the terms of the settlement agreement embodied by this Consent Judgment; any other representations, communications or agreements by or between the Parties shall have no force and effect.

XII. MODIFICATION

67. The terms of this Consent Judgment may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Consent Judgment, it shall be effective only by written approval of the Parties and the approval of the Court. MassDEP's decision to extend a deadline in this Consent Judgment shall not constitute a material change for purposes of this Paragraph.

68. In any disputes concerning modification of this Judgment, the party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Rule 60(b) of the Massachusetts Rules of Civil Procedure.

XIII. AUTHORITY OF SIGNATORY

69. The person signing this Consent Judgment on behalf of the Sheriff's Office acknowledges: (a) that he or she has personally read and understands each of the numbered Paragraphs of this Consent Judgment, including any Appendices attached to it; (b) that, to the extent necessary, the Sheriff's Office's managers, directors, officers, and shareholders have consented to the Sheriff's Office entering into this Consent Judgment and to its entry as a Final

Judgment; and (c) that he or she is authorized to sign and bind the Sheriff's Office to the terms of this Consent Judgment.

XIV. EFFECTIVE DATE

70. This Consent Judgment shall be effective when the Court enters the Consent Judgment on the docket.

XV. RETENTION OF JURISDICTION

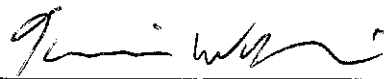
71. The Court shall retain jurisdiction over this case following entry of this Final Judgment for purposes of resolving disputes that arise under this Consent Judgment, entering orders modifying this Consent Judgment, or effectuating or enforcing compliance with the terms of this Consent Judgment and any permits, approvals, or directives issued by MassDEP pursuant to the terms of this Consent Judgment.

XVI. FINAL JUDGMENT

72. Upon approval and entry of this Consent Judgment by the Court, this Consent Judgment shall constitute a Final Judgment of the Court.

IT IS SO ORDERED. JUDGMENT is hereby entered in accordance with the
foregoing.

By the Court:



JUSTICE, SUPERIOR COURT

28 February 2024
Date

The Undersigned Parties enter into this Consent Judgment in the matter of
Commonwealth v. Worcester County Sheriff's Office (Suffolk Superior Court).

FOR THE COMMONWEALTH OF
MASSACHUSETTS

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

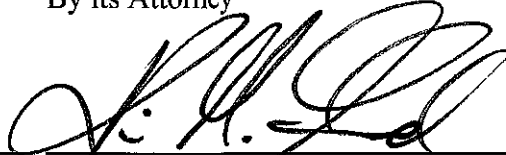


Julia Jonas-Day, BBO No. 703539
Tracy Triplett, BBO No. 651729
Assistant Attorneys General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 963-2021
Julia.Jonas-Day@mass.gov
Tracy.Triplett@mass.gov

Dated: 2/27/24

FOR WORCESTER COUNTY SHERIFF'S
OFFICE

By its Attorney



Kevin M. Gould, BBO No. 661545
General Counsel
Worcester County Sheriff's Office
5 Paul X. Tivnan Drive
West Boylston, MA 01583
kgould@sdw.state.ma.us

Dated: 2/21/24

Appendix A: Approved Notice of Medical Screening

_____, 2024

To: _____

Re: Potential Asbestos Exposure at the Main Jail Lobby in February 2021

Dear _____,

According to our records, you may have entered the Main Jail Lobby and/or immediately adjacent hallway of the Main Jail Lobby during the time period between 3 p.m. on February 22, 2021, and 4 p.m. on February 25, 2021, during which time the Massachusetts Department of Environmental Protection has determined that asbestos contained in the floor tile and adhesive under the floor tile in those locations had been disturbed as the result of a floor tile removal project¹ undertaken by the Worcester County Sheriff's Office. Upon becoming aware of this disturbance, the Worcester County Sheriff's Office immediately contracted with a licensed asbestos abatement provider who sealed off the area and completed the abatement of asbestos-containing floor tile in those locations. Air samples were also collected in and adjacent to the project area before and after abatement and, when analyzed, were acceptable in accordance with Massachusetts Department of Labor Standards air clearance standards.

While the duration of exposure (if any) to asbestos during that time period was brief, the Worcester County Sheriff's Office maintains that any such asbestos exposure alone would not be the sole cause of an adverse medical condition. Nonetheless, according to the Massachusetts Department of Environmental Protection, there is no safe level of exposure to asbestos. Out of an abundance of caution, the Worcester County Sheriff's Office has made arrangements with WorkCare, Inc., for a free, confidential, and voluntary medical examination, meeting the requirements of 29 C.F.R. § 1926.1101(m)(1)(ii),(2)(ii), which is attached hereto. If you are interested, WorkCare can be contacted at: _____ to schedule a screening at one of their partnering local clinics.

The free, confidential, and voluntary medical examination will remain available for one year from the date of this letter.

Sincerely,

¹ The tile-removal project was commenced as a result of the deteriorating condition of the floor tiles and the results of inspections from the Massachusetts Department of Public Health, which noted "broken or missing" floor tiles.