

**CITY OF BOULDER  
PARKS AND RECREATION ADVISORY BOARD AGENDA ITEM**

**MEETING DATE: August 25, 2014**

**AGENDA TITLE:** Public Hearing and Consideration of a Motion to Approve a 3 Year Studio Arts Boulder Lease and Services Agreement for the City of Boulder Pottery Lab.

**PRESENTERS:**

Jeff Dillon, Director, Parks and Recreation  
Yvette Bowden, Deputy Director, Parks and Recreation  
Abbie Poniatowski, Senior Business Manager  
Teri Olander, Recreation Administrator

**EXECUTIVE SUMMARY:**

The purpose of this item is for the Parks and Recreation Advisory Board (PRAB) to review and consider the approval of a Lease and Services Agreement for the City of Boulder's Pottery Lab.

A Pottery Lab Working Group (PLWG), comprised of 12 members (community, staff and PRAB), was established in February 2012 to make consensus recommendations to the city on ways to ensure the sustainability of the pottery program. The working group recommended that the city explore a nonprofit or public-private partnership. A Request for Proposal (RFP) for the management and operations of the Pottery Lab was issued in July 2013. One responsive proposal was submitted by Studio Arts Boulder (SAB). The city reviewed and accepted the proposal and began contract negotiations in January 2014. The attached Lease and Services Agreement (Agreement) for the Pottery Lab defines the relationship between Studio Arts Boulder and City of Boulder (Attachment A).

**STAFF RECOMMENDATION:**

Staff recommends that the PRAB approve the Agreement and authorize the City Manager to make minor amendments prior to or during the term of this agreement in order to ensure that the Pottery Lab is properly maintained and operated in a manner that is consistent with applicable laws and the policies and regulations of the City of Boulder.

**Suggested Motion Language:**

Staff requests PRAB's consideration of this matter and action in the form of the following motion:

Motion to approve the Lease and Services Agreement for the City of Boulder Pottery Lab and authorize the City Manager to make minor amendments prior to or during the term of this agreement in order to ensure that the Pottery Lab is properly maintained and operated in a manner that is consistent with applicable laws and the policies and regulations of the City of Boulder.

**CITY COUNCIL, BOARD AND COMMISSION FEEDBACK:**

- PLWG updates were regularly provided to the PRAB from April through September 2012.
- The PLWG reached consensus and recommended to the PRAB that the city explore a public-private partnership option and issue a Request for Information (RFI) to determine whether there was interest among qualified entities to manage the pottery program. Recommendations for the future of the Pottery Lab program were developed by the working group and presented to PRAB on October 22, 2012 as a discussion item.
- PLWG recommendations and next steps were discussed with City Council January 22, 2013.
- PRAB supported the recommendations for the future of the Pottery Lab, including issuing an RFI in the first quarter of 2013 and RFP in the third quarter of 2013.
- Updates on the RFI and RFP processes were provided to PRAB regularly in 2013.
- Regular updates on contract negotiations were provided to PRAB beginning in January 2014.

**COUNCIL FILTER IMPACTS**

**Economic:** The pottery program is a community asset that provides programs for the community for a fee. Many participants in the pottery program pursue additional visual arts opportunities in the community, including joining the Boulder Potter's Guild. The pottery program's reach has also extended into offering summer youth camps.

**Environmental:** The pottery program is offered in a safe and environmentally friendly place for residents to learn and practice visual arts. Upgrades to the Pottery Lab to improve air quality and energy efficiency have been made over the past few years, and the kilns have been replaced with newer models that have high efficiency burner systems.

**Social:** Community members have expressed support for the continued operation of the pottery program as it is an educational program and a valued gathering place including classes for people with varying abilities. Pottery is also considered a popular therapeutic program for many participants in the EXPAND (Exciting Programs Adventures and New Dimensions) program.

**OTHER IMPACTS:**

**Fiscal:** By 2017, the agreement with SAB will reduce the city's annual subsidy for the Pottery Lab from \$86,000 to \$64,000. The City's ultimate goal is to eliminate its financial subsidy of the Pottery Lab and have it operate as a viable and sustainable business by the year 2018.

**Staff time:** Annually, the execution of this agreement will save many hours of staff time and would result in the elimination of two standard positions. Plans are in place to respectfully manage staff transitions if the Agreement is approved. An existing staff member will be responsible for contract management.

**PUBLIC FEEDBACK:**

The PLWG held 10 meetings in 2012 and explored issues and options related to:

1. Keeping the pottery program as a city program; and
2. Shifting the pottery programming to a nonprofit organization, public/private partnership, or other entity.

Subcommittees of the working group were formed to research programming issues, finance and space considerations and an analysis of recommendations identified in the 2011 Pottery Program Management Assessment. Members of the pottery community were involved throughout the working group process.

**ANALYSIS:**

Over the past 50 years, the city's pottery program has been a community program that receives a large operating subsidy. In an effort to increase the participation of the pottery program by a broader segment within the community and to address cost-recovery issues, the department contracted with Museum Management Consultants, Inc. (MMC) to complete the Pottery Program Management Assessment (management assessment), finalized in November 2011. A copy of the management assessment can be found [here](#).

In February 2012, participants of a Parks and Recreation Department's community roundtable reviewed recommendations from the management assessment and established the PLWG.

A majority of the working group (eight of 12 members) recommended that the city move forward with the partnership option, for the following reasons:

- The partnership will have more flexibility in hiring, programming, and fundraising.
- Ongoing city management of the pottery program seems unlikely to result in long-term sustainability of the program.

Department and City Attorney staff negotiated in good faith with representatives from SAB to develop the Agreement that was modeled on previous agreements between the city and nonprofit organizations.

**ATTACHMENTS:**

**Attachment A:** Lease and Services Agreement for the City of Boulder Pottery Lab

**LEASE AND SERVICES AGREEMENT  
FOR THE  
CITY OF BOULDER POTTERY LAB**

THIS AGREEMENT is made to be effective this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the CITY OF BOULDER, a Colorado home-rule city (the “City”), and Studio Arts Boulder, a 501(c)(3) non-profit corporation (the “Contractor”).

**RECITALS**

A. The City of Boulder Pottery Lab (“Lab”) was established in 1954 and moved to its current location at 1010 Aurora Avenue, Boulder, Colorado in 1956. Since its inception the Lab has provided art classes and pottery instruction to children, teens, adults, seniors and people with disabilities.

B. The City wishes to provide high quality pottery resources to the community in the most cost effective manner. Through an RFP process, the City sought a contractor to operate and manage the Lab as well as to provide pottery, ceramics and other arts classes to the community.

C. The Contractor submitted the most responsive proposal for the operation and management of the Lab and the City is desirous of contracting with the Contractor.

D. In compliance with Charter 164 and section 8-3-2 of the Boulder Revised Code, the Parks and Recreation Advisory Board shall approve any lease in or on park lands whose term does not exceed three years, as may be recommended to it by the city manager. Longer lease term periods require city council approval.

E. This Agreement is for Contractor services as well as lease of park property (the Lab). The lease term shall be three years commencing on January 1, 2015 (the Commencement Date) and unless terminated sooner, terminating on December 31, 2017. However, the entire Agreement shall be longer to accommodate for a transition period to begin on the date this agreement is signed (“Effective Date”) through the Commencement Date January 1, 2015 (“Transition Period”). The Transition Period is more fully described in section 2.3 below, and shall not include lease of the Lab or Lab equipment.

F. In order to ensure, a successful transition of the Lab services, this Agreement includes some in-kind services and financial subsidy from the City to Contractor.

G. The City’s ultimate goal is to eliminate its financial subsidy of the Lab and to have it operate as a viable and sustainable business by the year 2018. Provided that the Contractor meets the terms and conditions as set forth in this Contract, it is the City’s intention and hope to continue to lease the Lab to the Contractor to allow both the City and the Contractor to meet the City’s goal of ensuring long-term financial sustainability for the Lab.

## COVENANTS

NOW, THEREFORE, in consideration of the terms, conditions and covenants herein stated, the parties agree as follows:

1. **CONTRACT DOCUMENTS.** It is agreed that the request for bids, the specifications, and the Contractor's proposal (copies of which are hereto attached) are made a part of this Contract, and each of the parties agrees to carry out and perform all of the provisions of said documents. In the event of conflicts or inconsistencies between this Agreement and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- (a) The Agreement and its attachments;
- (b) The request for bids and specifications; and
- (c) The Contractor's proposal.

2. **GRANT AND TERM.**

2.1 **Lab Facility & Equipment Lease.** The City agrees to lease the Lab to the Contractor together with the existing Lab Equipment and Contractor shall provide for the operation and management of the Lab on the Commencement Date of January 1, 2015 through December 31, 2017. See **Attachment 1**, Lab Equipment Inventory. At the expiration of the Agreement, Contractor shall surrender the Lab Equipment to City by delivering the Lab Equipment to City in good condition and working order, ordinary wear and tear excepted, as it was on the Commencement Date. The parties agree to perform a walk-through on the Commencement Date to document the condition of the Lab and the Lab Equipment. Additionally, the Contractor agrees as follows:

- (a) Contractor shall only use the Lab Equipment in a careful and proper manner and shall comply with all laws, rules, ordinances, statutes and orders regarding the use, maintenance of storage of the Lab Equipment. The City shall provide the Contractor with copies of existing Lab Equipment operating manuals if available as well as rules and best practices for proper use of the Lab Equipment.
- (b) Contractor shall, at Contractor's sole expense, keep and maintain the Lab Equipment clean and in good working order and repair during the term of this Agreement. In the event the Lab Equipment is lost or damaged by Contractor beyond repair, Contractor shall pay City the replacement cost of the Lab Equipment, and the City shall replace the lost or damaged Lab Equipment. Notwithstanding the foregoing, Contractor shall not be required to replace, or pay to the City, the replacement cost of Lab Equipment lost or damaged beyond repair due to natural catastrophes, including but not limited to fire and flood.
- (c) Any equipment purchased by Contractor, including equipment purchased to replace worn out Lab Equipment shall be and remain the property of the

Contractor throughout the term of this Agreement and at the expiration of this Agreement. Contractor is responsible for maintaining any documentation to verify its purchase of any equipment. Notwithstanding the foregoing, Contractor is not required to replace worn out Lab Equipment.

- (d) Contractor agrees to an annual shutdown of the Lab, not to exceed seven days, as agreed by parties, to allow the parties to perform annual cleaning, repair and maintenance responsibilities as set forth in the Maintenance Schedule; (*see* Attachment 7).
- (e) The City represents and warrants that as of the execution of this Agreement, the Lab is, and on January 1, 2015 the Lab will be in compliance with all ordinances, rules and regulations of the City so that the operation of the Lab, as currently conducted, will not violate any City ordinance, rule or regulation.

**2.2 Renewal Option.** Contractor shall be given the option to renew this Agreement for one additional two year term. Such option shall be exercisable only by delivery of Contractor's signed written notice to City of its intent to exercise its option to renew not less than 180 days prior to the expiration of the initial term. Upon receipt of such notice, the parties agree to negotiate in good faith for an extended term. Any extension of the Agreement terms shall be in writing and signed by both parties.

**2.3 Transition Period.** The parties acknowledge that the obligations of the Contractor to operate the Lab will commence on January 1, 2015, but agree to cooperate during a Transition Period defined as the time period between the Effective Date of this Agreement and the Commencement Date of January 1, 2015. In order to allow for a successful transition of Lab operations a transition timeline identifying transition obligations and deadlines is provided here as **Attachment 2**.

**2.4 Communication for the Transition Period.** For the term of the Transition Period, Contractor agrees to communicate questions as to the operation of the Lab through the Program Manager; the Program Manager will make every effort to provide Contractor with a timely response. Additionally, the parties agree to meet monthly to discuss transition of the operations to the Contractor.

### 3. **RENTAL AND PROGRAM SUBSIDY.**

**3.1 Rent.** On or before the first day of each lease year beginning on January 1, 2015 during the term of this Agreement, Contractor will pay City the sum of \$1.00.

**3.2 Annual Subsidy.** Subject to the discretionary annual appropriation of funds on the part of the City Council of the City of Boulder, the City shall provide financial operating support ("annual subsidy") to the Contractor during the term of this Agreement. The Contractor and the City agree that a portion of the annual subsidy will be set aside in a reserve account. The Contractor will notify the City of its intent to access funds from the reserve account with a report

documenting how the funds will be spent; the use of the reserve accounts is at the discretion of the Contractor.

The annual subsidy will be disbursed in two equal payments on the first business day following January 1 and July 1 of each Agreement year beginning on the Commencement Date. The amount of the annual subsidy, and the allocation to the reserve account, is as follows:

Year	Operating	Reserves	Total
2015	\$71,000	\$15,000	\$86,000
2016	\$56,000	\$19,000	\$75,000
2017	\$46,000	\$18,000	\$64,000

#### 4. OTHER SUPPORT SERVICES PROVIDED BY CITY.

4.1 **Program Registration.** The City agrees to provide registration services for Contractor's class participants until July 1, 2015. After that date, the Contractor will pay the City \$16,400/year for the use of the registration system; this amount will be pro-rated based on the date that the Contractor transitions to its own registration system. The City agrees to provide Contractor with instruction on how to use the City's registration services and to provide reasonably related information technology support. The City will support Contractor's transition to its own registration system and agrees to provide up to 30 hours of City staff time for research and assistance.

4.2 **IT Support.** For the first year of the contract, the City will provide Contractor twenty (20) hours of IT support as reasonably requested by the Contractor. (NOTE: This is requested by Contractor to assist with items, such as transfer of glaze recipes, programs in the City computer to the Contractor's computer, transitioning other information, such as mailing lists, customer lists, and class lists from City computer to Contractor's computer, and coordinating linkage between City and Contractor's website.)

4.3 **Cash Transactions.** Any program or class utilizing the registration services provided by the City that will involve cash transactions other than the annual Pottery Sale will be subject to prior City approval while the City is responsible for business transactions. Contractor will be required to follow the City's cash handling policies until January 1, 2015, unless Contractor is then utilizing registration services provided by the City and, if so, then Contractor will be required to follow the City's cash management policies for cash received for programs and classes until Contractor assumes such services.

4.4 **Disbursement of Program Revenue.** "Program Revenue" is defined as class registration fees and any other revenue derived from instruction services provided by the Contractor. As long as the City is responsible for collecting revenue, the City will disburse the program revenue collected by the City on behalf of the Contractor to Contractor on the first business day of every month. The City will provide the Contractor with a report of such payment details based on the above revenue categories and year to date payments for the program revenue categories.

As long as the City is providing registration services and collecting revenue, if a participant chooses to drop out of a scheduled class, the City's refund policy will be adhered to. The City may refund all or a portion of the course fee to the participant and withhold such amount from the disbursements to the Contractor. The City's current refund policy is provided here as **Attachment 3**.

4.5 **Glaze Recipes.** The City shall provide Contractor with all known glaze recipes for use at the Lab. The City allows the Contractor use of the recipes at the Lab but they remain the property of the City. Contractor shall not sell, license, transfer or otherwise convert such property, provided, however, Contractor may sell, license and otherwise possess and transfer any glaze recipes available in the public domain.

4.6 **ADA Inclusionary Training Services.** The City shall provide Contractor and its staff with accommodation training up to three times per year, to assist Contractor in providing inclusionary services to their program participants. Additionally, the Contractor may contact the City's EXPAND program at 303-441-4933, for additional information regarding accommodations and the inclusion process.

4.7 **Program Manager.** The Contractor shall consult with and advise the City as it reasonably requires during the term of this Contract. As a general matter, it shall communicate with the City about this Contract through Teri Olander, City of Boulder Recreation Administrator – Programs, or her designee, who has been assigned by the City to serve as the Program Manager.

## 5. **PROMOTIONAL MATERIALS.**

5.1 **Intellectual Property.** The Lab will continue to be identified as the "City of Boulder Pottery Lab" ("Lab Name"). Subject to prior City approval, Contractor shall be allowed the right to reference and use: "City of Boulder Pottery Lab", "City of Boulder Parks and Recreation Department" and Pottery Lab's website addresses and logos only in connection with providing promotional materials about the Lab. Contractor acknowledges that the City owns and retains exclusive intellectual property rights now existing or which may in the future exist associated with the Lab and the City. No part thereof may be used by or under the authority of City in any manner other than as expressly provided in this Agreement.

5.2 **City Approval.** Contractor will submit all promotional materials that are to be included within the *City of Boulder Recreational Guide* to the Program Manager. Contractor shall provide such materials and information on or before the deadline as communicated by the Program Manager. Marketing and promotional materials are subject to City approval as set forth on **Attachment 4**, Promotional Materials.

5.3 **Contractor's Identification.** For any promotional materials or references to the Lab, including but not limited to, building signage, program names, communications, websites (City and Contractor), and phone, Contractor may include its name, logo, and other reference as may accurately reflect Contractor's role in the operation and management of the Lab.

5.4 **Advertising of Classes.** The City agrees to advertise the Contractor's classes in the seasonal *City of Boulder Recreation Guide* as follows:

2015:	2 pages
2016:	1 page
2017:	½ page

The Contractor will pay the City \$3750/page for any additional pages. Information as to the transition from the City to the Contractor will be included in the 2015 Winter recreation guide. Contractor will provide the City with language regarding the transition by September 1, 2014, such language is subject to City approval.

## 6. CONTRACTOR'S OBLIGATIONS AND REPORTING RESPONSIBILITIES.

6.1 **Contractor's Duties.** In accordance with the Contractor's proposal, the Contractor is responsible for the operation and management of the Lab, including the provision of pottery, ceramics and other arts related classes and programs, and as more specifically set forth on **Attachment 5**, Contractor's Duties. Any fundamental change in the operation of the Lab or the Contractor's duties as contained on Attachment 5 will be subject to prior City approval.

6.2 **Reports.** The Contractor shall submit the following reports, on a form provided by the City, to the Program Manager on or before the 15th day of April, June, September, and January:

- (a) Financial ledger;
- (b) Proof of utilities payments;
- (c) Documentation of conformance with the performance benchmarks as set forth in section 7 of this Agreement;
- (d) Participant information, on a form provided by the City, in Microsoft Word or Excel, or compatible software, as follows: i) participant name; ii) parent name (if applicable); iii) street, city, zip code; iv) phone number; and v) email address; and
- (e) Expenditures and proof of such expenditures associated with the provision of inclusions services, as set forth on Attachment 5 "Contractor's Duties," paragraph 4.

7. **PERFORMANCE BENCHMARKS.** In order for the City to guarantee consistent levels of service at the Lab, the City has established the performance benchmarks as goals for the Contractor as forth on **Attachment 6**. These benchmarks are based on the 2013 levels of service provided by the City. Failure by the Contractor to meet these benchmarks may be considered a material breach and the City may exercise its right to terminate this Agreement in accordance with section 10 of this Agreement, except in the event of a natural catastrophe and, in such event, the benchmarks shall be waived with such time as Contractor is able to resume normal operations of the Lab.

## 8. MAINTENANCE, UTILITIES, ALTERATIONS AND IMPROVEMENTS.

8.1 **Maintenance Obligations of Contractor.** The Contractor shall perform all cleaning of the Lab and all routine maintenance as shown on Attachment 7, Maintenance Schedule. The Contractor shall be financially responsible for any equipment repairs and interior repairs to the Lab, which are not the responsibility of the City, as identified in Attachment 7. Additionally, the Contractor is responsible for the following:

- (a) The Contractor shall keep the sidewalks in front of and around the Lab, as well as the grounds of the Lab, free from all snow, ice, litter, dirt, debris and obstructions, and it shall neither permit nor suffer any disorderly conduct, noise or nuisance whatsoever on or about the Lab having a tendency to annoy or disturb any persons occupying property adjacent to the Lab.
- (b) The maintenance performed by the Contractor shall, at a minimum, comply with industry standards for the maintenance of buildings and facilities and shall conform to the schedule of maintenance reflected in Attachment 7, Maintenance Schedule. Contractor shall allow the City to conduct regular inspections of the Lab to ensure compliance with Attachment 7, Maintenance Schedule.
- (c) Contractor shall annually submit a maintenance log to the City on or before February 1<sup>st</sup> detailing: (i) maintenance performed on the Lab; (ii) the date corresponding maintenance was completed; and (iii) a list of items which will require City maintenance and repair to be performed at the annual shutdown, unless immediate maintenance is required for the safe and efficient operation of the Lab. Each party is responsible for its portion of the maintenance costs identified in Attachment 7. The parties agree to meet prior to the annual shutdown to review maintenance issues. The maintenance log will be made available to the City upon request at any time for its review.
- (d) The Contractor acknowledges that the Lab is a historic landmarked structure and will maintain the Lab with the proper care due a historic building. Contractor agrees to contact the City if it has any questions regarding any materials or equipment located within the Lab.

8.2 **Improvements.** The Contractor may make improvements and alterations to the Lab subject to prior City approval and provided that such improvements and alterations are in conformity with all applicable codes and provisions of law. If the Contractor is approved to make any exterior changes to the Lab, such exterior changes shall be subject to the standards set out in section 9-11-18 "Historic Preservation" of the Boulder Revised Code. Additionally, the Contractor agrees to the following for any improvements associated with the Lab:

- (a) Any work done by the Contractor as provided by this Agreement shall conform to all applicable building and fire codes, and regulations.

- (b) Contractor shall rely on the City's ADA report referenced in section 9.2 of this Agreement in order to inform decisions with respect to changes to the physical layout of the Lab. Contractor is responsible for all costs associated with any modification that is based on program changes and changes to the physical layout of the Lab implemented by Contractor.
- (c) The City shall not be liable for the payment of any expense incurred by the Contractor, or the value of any work done or material furnished to the Lab by virtue of any construction, change, addition or alteration undertaken by the Contractor. All such work shall be at the Contractor's sole cost and expense. The Contractor shall be wholly responsible to all contractors, laborers and material men for any such work.
- (d) With regard to improvements, the Contractor shall indemnify and hold the City harmless from any and all liabilities, damages or penalties, and any costs, expenses or claims of any kind or nature arising out of any construction, change, alteration or addition undertaken by the Contractor, including the City's reasonable attorney's fees. Such indemnification shall apply to any damages or injuries to person or property.
- (e) All additions, alterations and leasehold improvements made by the Contractor shall become part of the real estate and permanent structure thereon and shall remain upon and be surrendered with said Lab as a part thereof upon the termination of this Agreement.
- (f) Trade fixtures, furniture and equipment which may be installed in the Lab by the Contractor during the term of this Agreement shall not become a part of the Lab and may be removed by the Contractor at any time prior to the end of the term. However, the Contractor shall, at its own cost and expense, repair any and all damage to the Lab resulting from or caused by the removal thereof.

8.3 **Payment of Utilities.** The Contractor shall be responsible for the payment of the following utilities:

- (a) Trash and recycling services;
- (b) Telephone services and internet connection;
- (c) Gas; and
- (d) Electric.

The Contractor agrees that all bills and services which it incurs in connection with the Lab shall be listed in the Contractor's name alone. The Contractor shall hold the City harmless for any and all bills, charges and services which may accrue with respect to the Lab during the term of this Agreement.

**8.4 The Contractor's Personal Property.** All personal property of any kind or description whatsoever of the Contractor's in the Lab shall be kept there at the Contractor's sole risk, and the City shall not be held liable for any damage done to, or loss of such personal property; nor for any damage to or loss of personal property which may be suffered by individuals using or attending activities at the Lab.

**8.5 City Maintenance at Contractor's Cost.** If the Contractor shall fail, refuse or neglect to provide routine maintenance or fulfill its repair obligations stated in this Agreement, or if the City is required to make any repairs or alterations to the Lab as a result of such neglect, the City shall have the right, but not the duty, after the City has given to the Contractor ten days' notice (except in case of any emergency), to perform such maintenance or make such repairs on behalf of and for the account of the Contractor and to enter upon the Lab for such purposes, and charge the cost and expense thereof to the Contractor, and Contractor agrees to pay such amount. Any cost or expense incurred by the City and chargeable to the Contractor as herein provided shall be reduced to the extent that the City is reimbursed therefor under any policy of insurance.

**8.6 Liens Caused by the Contractor.** If, because of any act or omission of the Contractor, any mechanic's or other lien or order for the payment of money shall be filed against the Lab or against the City (whether or not such lien or order is valid or enforceable as such), the Contractor shall, at the Contractor's own cost and expense, within 10 days after notice, either cause the same to be canceled and discharged of record or deliver to the City a bond containing provisions satisfactory to the City, issued by a surety company reasonably acceptable to the City from and against all costs, expenses, claims, losses, damages and liabilities, including reasonable counsel fees.

## 9. MAINTENANCE OBLIGATIONS OF THE CITY.

**9.1 City Responsibilities.** Subject to and limited by available appropriations of funds by City Council for that purpose, City shall keep the structural elements of the Lab (by way of example: sewer connections, plumbing, and electrical wire) in good repair. Additionally the City is responsible for the cleaning, maintenance and repair of the Lab as outlined on Attachment 7, Maintenance Schedule.

**9.2 ADA Improvements.** The City conducted an Accessibility Audit in 2012, which findings were delivered to the City, in a document titled, "Report to the City of Boulder Parks and Recreation Department," ("Report") a copy of which is attached here as **Attachment 8**. The following improvements identified in Attachment 8, as requirements for ADA compliance, will be made by the City no later than December 31, 2015:

- Modification to the brick parking space in the front of the building to provide a concrete surface with compliant slope;
- Modification to the front door to widen to ADA requirements;
- Modification to the HVAC duct to provide adequate headroom;
- Modifications to the restroom as identified in the Report; and
- Installation of small items such as signage as identified in the Report.

Except for costs associated with any building modification based on program changes and changes to the physical layout of the Lab implemented by the Contractor, the City shall, at its sole cost and expense, be responsible for any building modifications necessary or required so that the Lab can provide the programs in compliance with all ADA requirements.

The Report did not recommend the installation of an elevator, as such the City will not agree to the installation of an elevator in the Lab.

**9.3 Damage or Destruction.** The City shall be responsible for major damage expenses caused by natural forces and covered by its insurance carrier. If the Lab is damaged by fire or other casualty City will, promptly after learning of such damage, notify Contractor in writing of the time necessary to repair or restore such damage, as estimated by City's architect, engineer or contractor. If such estimate states that repair or restoration of all of such damage that was caused to the Lab or to any other portion of the Lab necessary for Contractor's occupancy cannot be completed within 90 days from the date of such damage (or within 30 days from the date of such damage if such damage occurred within the last 12 months of this Agreement), then either party will have the option to terminate this Lease. Nothing in this section shall remove the City's discretion not to repair or restore the Lab.

Any option to terminate as described in this section must be exercised by written notice to the other party given within 10 days after City delivers to Contractor the notice of estimated repair time. If either party exercises its option to terminate this Lease, the Term will expire and this Lease will terminate 10 days after notice of termination is delivered.

If the Lab is damaged by fire or other casualty and neither party terminates this Lease, as stated above, then City will repair and restore such damage with reasonable promptness, subject to delays for insurance adjustments and delays caused by matters beyond City's control. However, City will not be required to spend more for such repair and restoration than the insurance proceeds available to City as a result of the fire or other casualty. City will have no liability to Contractor and Contractor will not be entitled to terminate this Lease if such repairs and restoration are not in fact completed within the estimated time period, provided that City promptly commences and diligently pursues such repairs and restoration to completion. In no event will City be obligated to repair, restore or replace any of the property required to be insured by Contractor according to section 11 of this Agreement.

**9.4 Condition of Lab.** Subject to and limited by available appropriations of funds by the City Council for the purpose, the City shall keep the structure of the Lab repaired so as to comply with all applicable zoning, building and fire codes, regulations, and laws but in so doing it shall receive the cooperation of the Contractor to the degree that responsibilities assigned to, or rights allowed the Contractor by this Agreement, are affected. Nothing in this section shall limit the Contractor's obligation to perform non-structural maintenance as set forth in section 8 of this Agreement.

## 10. TERMINATION.

10.1 **For Cause.** This Agreement may be terminated by either party if it has been materially breached by the other party, 30 days written notification is tendered; and if during such thirty (30) day period following receipt of such notice, the breaching Party fails to cure such breach. Notice must include a description of the breach.

The parties shall cooperate with respect to the termination date in order to provide sufficient time to allow for the orderly withdrawal of Contractor without creating additional harm or inconvenience to the Lab program and participants. The City will make the final determination as to the amount of time, and shall provide the date of termination in a written termination notice to Contractor.

10.2 **For Convenience.** The parties may, at any time, terminate this Agreement, in whole or in part, for its own convenience and without cause of any nature by giving the other party written notice at least one-hundred eighty days in advance of the termination date, provided, however, if the City does not appropriate sufficient funds to pay the full annual subsidy (section 3.2) then the Contractor may terminate this Agreement on 60 days notice to the City.

10.3 **Additional Termination Terms** In the event of any termination under this section:

- (a) Contractor shall continue to be liable to the City for the expense of removing all persons and property from the Lab. The City may re-enter the Lab using such force for that purpose as may be necessary without being liable to any prosecution for such re-entry or the use of such force.
- (b) In the event of any vacation or abandonment of the Lab, the Contractor shall nevertheless continue to be liable to the City for all sums for which the Contractor would have been liable had it not vacated or abandoned the Lab. The City may re-enter the Lab, using such force for that purpose as may be necessary, without being liable to any prosecution for such re-entry or the use of such force. The City may repair or alter the Lab in such manner as it may deem necessary, and the Contractor shall repay the costs of such retaking, repossessing, repairing and altering of the Lab and the expense of removing all Contractor property from the Lab.
- (c) The City may, but shall not be required to relet the Lab or any part thereof for the whole or any part of the remainder of the original term or for a longer period in the City's name, or as the agent of the Contractor. No entry or re-entry by the City, whether had or taken under summary proceedings or otherwise, shall absolve or discharge the Contractor from liability hereunder. The Contractor hereby expressly waives any defense that might be predicated upon the issuance of a dispossess warrant or their termination or cancellation of the term hereof.

- (d) In the event of any termination under this section, the City shall not be responsible to provide the Contractor with any financial subsidy not already disbursed.
- (e) In the event of any termination under this section, the City shall be free to obtain said services from other sources without incurring liability or damages to the Contractor.
- (f) Upon termination of the Agreement by the City, with or without cause, Contractor will not have any claim against the City by reason of, or arising out of, incidental or relating to termination. The City will not have any claim against the Contractor by reason of, or arising out of, incidental or relating to termination, once possession of the Lab is returned to the City and the City has found that the Lab and its equipment are in good working order, as set forth in Section 2.1 of the Agreement.

11. INSURANCE. Contractor agrees to procure and maintain in force during the terms of this Agreement, at its own cost, the following minimum coverages:

A. Workers' Compensation and Employers' Liability

- i. State of Colorado: Statutory

B. Commercial General Liability

- i. Bodily Injury & Property Damage General Aggregate Limit: \$2,000,000
- ii. Each Occurrence Limit: \$2,000,000

The policy shall be on an Occurrence Form and include the following coverages:

Premises Operations; Liability assumed under an Insured Contract; Independent Contractors; and Broad Form Property Damage. Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001.

C. Property Insurance (covering Contractor's business personal property, machinery, equipment, Contractor's improvements and betterments) as follows:

Coverage for Contractor's Improvements, Fixtures	100% replacement cost
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City is not responsible for loss or damage to the Contractor's personal property, machinery or equipment. Property insurance shall be written on a Covered Cause of Loss-Special Form, with replacement cost coverage. City shall be named as a loss payee on property

coverage for Contractor's improvements and betterments. A waiver of subrogation shall apply to City for any City Property.

D. Coverage. Insurance required by this Agreement shall be primary coverage, unless otherwise specified, and shall specify that in the event of payment for any loss under the coverage provided, the insurance company shall have no right of recovery against City or its insurers. All policies of insurance under this Agreement shall be provided by an insurance company or companies qualified to conduct business in Colorado and shall have an AM Best rating of not less than A- VI. This insurance shall be maintained in full force and effect during the term of this Agreement and for the additional periods set forth herein and shall protect Contractor, its agents, employees and representatives, from claims for damages for personal injury and wrongful death and for damages to property arising in any manner from negligent or wrongful acts or omissions of Contractor, their agents, employees, and representatives in the performance of the services covered herein.

By the date set forth in this Agreement, the Contractor shall forward Certificates of Insurance to the City. The insurance required shall be procured and maintained in full force and effect for the duration of the Contract. Certificate Holder shall be the **City of Boulder at 1777 Broadway, P.O. Box 791, Boulder, CO 80306.**

**All insurance policies** (except Workers Compensation) **shall include City of Boulder and its elected officials and employees as additional insureds as their interests may appear.** The additional insured endorsement should be at least as broad as ISO form CG2010 for General liability coverage.

Contractor, or Contractor's insurance broker, shall notify the City of any cancellation or reduction in coverage or limits of any insurance within seven (7) days of receipt of insurer's notification to that effect. The Contractor shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.

12. **INDEMNIFICATION.** The Contractor agrees to indemnify and save harmless the City against any and all damages to property or injuries to or death of any person or persons arising from its performance of this Contract, including property and employees or agents of the City and shall defend, indemnify and save harmless the City from any and all claims, demands, suits, actions or proceedings of any kind or nature, including without limitation Worker's Compensation claims, of or by anyone whomsoever in any way resulting from or arising out of the Contractor's operations in connection with this Agreement, including operations of sub-contractors and acts or admissions of employees or agents of the Contractor or its sub-contractor.

Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, section 24-10-101 *et seq.*, C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the City, its departments, institutions, agencies, boards, officials and

employees is controlled and limited by the provisions of section 24-10-101 *et seq.*, C.R.S., as now or hereafter amended.

13. **NOTICE.** All notices hereunder and communications with respect to this Agreement shall be effective upon the mailing thereof by registered or certified mail, return receipt requested, and postage prepaid to the persons named below:

If to the Contractor: Studio Arts Boulder  
P.O. Box 19815  
Boulder, CO 80308

If to City: City of Boulder  
P.O. Box 791  
Boulder, CO 80301

With a copy to:  
City of Boulder Park's and Recreation Department  
Attn: Senior Business Manager  
3198 Broadway  
Boulder, CO 80304

Either party may change designated recipients by written notice to the other party.

14. **MISCELLANEOUS PROVISIONS.**

14.1 **Independent Contractor.** In the relationship between the Contractor and the City, the Contractor is an independent contractor. The Contractor shall supply all personnel, equipment, materials and supplies at its own expense, except as specifically set forth herein. The Contractor shall not be deemed to be, nor shall it represent itself as, an employee, partner, or joint venturer of the City. No employee or officer of the City shall supervise the Contractor. **The Contractor is not entitled to worker's compensation benefits and is obligated to directly pay federal and state income tax on money earned under this Contract.**

14.2 **Parks and Recreation Department Not to Compete.** The Parks and Recreation Department shall not directly or indirectly compete with the business of the Contractor. The term "business" here means the operation of any pottery or ceramic programs except those programs that may be offered collaboratively through the City of Boulder's EXPAND program.

14.3. **City Attendance at Board Meetings.** A representative of the City may attend regularly scheduled Contractor Board of Directors meetings pertaining to the Lab, provided however, that, in the discretion of the Board, sensitive or confidential matters may be discussed at closed meetings. The City will provide at least 24 hours advance notice to Contractor if a City representative wants to attend a regularly scheduled Board of Directors meeting. The Contractor may waive such advance notice at its discretion.

14.4. **No Assignment.** The Contractor shall not assign this Contract without the written consent of the City, which it may withhold at its sole discretion.

14.5. **Boulder Revised Code.** This Agreement shall be subject to the provisions of the Charter, Municipal Code and ordinances of the City of Boulder.

14.6. **No Third Party Beneficiaries.** It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the City and the Contractor that any such party or entity, other than the City or the Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

14.7. **Waiver.** The waiver of any breach of a term, provision or requirement of this Agreement shall not be construed or deemed as waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision or requirement.

14.8. **Amendments in Writing.** This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved by the City pursuant to City rules.

14.9. **Claims of Employees or Vendor.** If Contractor is unable to pay its employees vendors, and/or subcontractors, and said employees, vendors or subcontractors seek redress from the City and/or serve the City with garnishment, or other legal process, Contractor consents to the City paying the claim directly to the employee, vendor and/or subcontractor, or otherwise complying with garnishments or other legal process. Contractor further consents to the City deducting its expenses incurred in responding to payment requests, including but not limited to deductions from compensation owed to the Contractor.

14.10. **Prohibitions on Public Contracts for Services.** The Contractor certifies that the Contractor shall comply with the provisions of section 8-17.5-101 *et seq.*, C.R.S. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

The Contractor represents, warrants, and agrees (i) that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify or the Department Program; (ii) that the Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake preemployment screening of job applicants while the Agreement for services is being performed; and (iii) if the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement for services knowingly employs or contracts with an illegal alien, the contractor shall be required to:

- (a) Notify the subcontractor and the contracting state agency or political subdivision within three days that the Contractor has actual knowledge

that the subcontractor is employing or contracting with an illegal alien;  
and

- (b) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to 8-17.5-102(2)(b)(III)(A) the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Contractor further agrees that it shall comply with all reasonable requests made in the course of an investigation under section 8-17.5-102(5), C.R.S. by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or section 8-17.5-101 *et seq.*, C.R.S. the City may terminate this Agreement for breach and the Contractor shall be liable for actual and consequential damages to the City.

**14.11. No Multiple Fiscal Year Obligations.** Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution, Article X, Section 20. Notwithstanding any other provision of this Agreement, the City's obligations under this Agreement are subject to annual appropriation by the City Council of the City. Any failure of a City Council annually to appropriate adequate monies to finance the City's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to the Contractor of any failure to appropriate such adequate monies.

**14.12. Authority.** Contractor warrants that the individual executing this Agreement is properly authorized to bind the Contractor to this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement effective as of the day and year first written above.

CONTRACTOR

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF BOULDER )

The foregoing instrument was acknowledged before me, a notary public, this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_, as \_\_\_\_\_ of Studio Arts Boulder, a 501(c)(3) non-profit corporation.

Witness my hand and official seal.

My commission expires:

(SEAL)

\_\_\_\_\_  
Notary Public

CITY OF BOULDER

ATTEST:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney's Office

**ATTACHMENTS**

1. Lab Equipment Inventory
2. Transition Timeline
3. Refund policy
4. Promotional Materials
5. Contractor's Duties
6. Performance Benchmarks
7. Maintenance Schedule
8. ADA Audit Report