

USE, OCCUPANCY AND MAINTENANCE AGREEMENT
between
THE CITY OF SEATTLE DEPARTMENT OF PARKS AND RECREATION
and
SEWARD PARK CLAY STUDIO, INC.
for the
SEWARD PARK BATHHOUSE

AGREEMENT NUMBER: _____

THIS AGREEMENT is made and entered into by and between **the CITY OF SEATTLE**, a Washington municipal corporation ("City"), acting by and through the Seattle Department of Parks and Recreation ("SPR"), and **SEWARD PARK ART STUDIO, INC.**, a not-for-profit corporation organized under the laws of the State of Washington ("Seward Park Clay Studio").

RECITALS

Whereas, Seward Park Clay Studio has exhibited substantial community responsibility for artistic programming and made commitments for community outreach to diverse populations; and

Whereas, Seward Park Clay Studio has been responsible for the operation of a ceramic studio in the greater Seattle area for the past 33 years; and

Whereas, Seward Park Clay Studio is committed to maintaining open access to this public facility; and

Whereas, Seward Park Clay Studio wishes to continue to help create a positive environment for community-based partnerships within the visual arts; and

Whereas, SPR wishes to continue its relationship with the Seward Park Clay Studio to help maintain the delivery of such ceramics and visual arts services to the general public and in particular its young people;

NOW, THEREFORE, for and in consideration of the continuing services to be provided to the City, and for payment of Use Fees and maintenance of City facilities by the Seward Park Clay Studio, and in further consideration of the mutual promises, terms, conditions, performances, and other valuable consideration described herein, the parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 "Agreement" means this Use, Occupancy and Maintenance Agreement, including all exhibits, attachments and addenda appended hereto, as now existing or hereinafter amended.

- 1.2 "Bathhouse" means SPR's Seward Park Bathhouse facility located at Seward Park.
- 1.3 "City" means the City of Seattle.
- 1.4 "City Monies" means any cash, checks and other negotiable instruments payable in any capacity to the City.
- 1.5 "Commencement Date" means the date on which Seward Park Clay Studio is authorized use and occupancy of the Premises under the terms and conditions of this negotiated Agreement. The Commencement Date is the date when this Agreement is executed by both parties.
- 1.6 "SPR" means the City's Department of Parks and Recreation.
- 1.7 "Executive Director" is the person assigned by the Seward Park Clay Studio Board of Directors to coordinate arts programs and be in charge of the business, financial, marketing and administrative operations for Seward Park Clay Studio at its Bathhouse studio.
- 1.8 "Gross Receipts" means all fees from other users of the Premises, including Seward Park Clay Studio class fees, and all other earned income actually received by Seward Park Clay Studio from programming at the Bathhouse allocable to activities taking place on the Premises during the applicable time period, less the following: (a) federal or other admission taxes and (b) customary commissions and fees paid to or retained by third parties or credit card companies. Gross Receipts does not include concessions, unearned income, such as grants, individual contributions or fundraising activities, or any income from performances or programs at venues other than the Bathhouse.
- 1.9 "Major Maintenance" means maintenance that is solely the responsibility of SPR as defined in Section 9.3 herein.
- 1.10 "Premises" means that portion of the Bathhouse building currently used by Seward Park Clay Studio and excluding those portions of the Bathhouse used for purposes unrelated to this Agreement by lifeguards, the general public and other entities.
- 1.11 "Public Benefit" means the benefit provided to the public through the presentation of visual arts programming for youth and families proposed by Seward Park Clay Studio and accepted by SPR for use by Seward Park Clay Studio to partially offset the actual payment of the Use Fee due to the City under this Agreement, as specified in Exhibit C
- 1.12 "RAKU Event" means the ceramic special event scheduled by the Seward Park Clay Studio for the public and held in the area so designated in this Agreement.

1.13 "Seward Park Clay Studio" means Seward Park Clay Studio, Inc., a Washington nonprofit corporation.

1.14 "Superintendent" means the City's Superintendent of Parks and Recreation.

1.15 "Use Fee" means the fee paid by Seward Park Clay Studio to SPR pursuant to Section 5.1 hereof.

ARTICLE 2. PREMISES

2.1 Premises Description. Seward Park Clay Studio shall be authorized exclusive use and occupancy of the Premises and shared use of adjacent SPR property on the north side of the building for its annual RAKU Event, subject to all of the terms and conditions of this Agreement. A map of the Premises is attached as Exhibit A.

2.2 Acceptance of Premises. Seward Park Clay Studio has examined the Premises, has had a reasonable opportunity to obtain inspections and reports of professionals regarding the same, and has determined, after such examination, that the Premises are suitable for the use and occupancy desired by Seward Park Clay Studio hereunder. Seward Park Clay Studio ACCEPTS THE PREMISES in their condition as of the Use Commencement Date AS IS, WITH ALL DEFECTS, AND ASSUMES ALL RISK that one or more defects exist in the Premises. The CITY MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, express or implied, with respect to the condition of the Premises or the use and occupancy authorized therein other than as specified in this Agreement, except with respect to the absence of environmental or health hazards, including but not limited to asbestos, mold, lead in drinking water, and lead-based paint. The City shall perform appropriate inspections to ensure that no earthquake, environmental or health hazards are present on the premises. The City represents that, to its knowledge, there are no environmental or health hazards, including but not limited to asbestos, mold, lead in drinking water, and lead-based paint, in the structure of the building or its heating, air conditioning or other operational systems, or its soil and groundwater, and that, if such hazards do exist, it shall take all necessary steps to remove or adequately contain the same. Seward Park Clay Studio agrees that any express or implied representations, statements, or warranties made by or on behalf of the City prior to the Use Commencement Date, unless expressly set forth in this Agreement, have been effectively revoked and withdrawn and have no force or effect whatsoever.

ARTICLE 3. PREMISES TO BE USED AND OCCUPIED ONLY FOR LIMITED PURPOSES; SECURITY SERVICES AUTHORIZED

3.1 Mission of Seward Park Clay Studio and Authorized Uses. The mission of Seward Park Clay Studio is to provide artistic and cultural opportunities to the surrounding community through ceramics and visual arts programming open to the public. Seward Park Clay Studio offers classes in hand building, wheel throwing, ceramic sculpture, tile making and surface decoration. Each year, Seward Park Clay Studio schedules master classes featuring regionally

and nationally recognized ceramic artists. Workshops and training classes for organizations such as the Seattle Public Schools, 4H, Big Brother and Big Sisters of Seattle, the Seattle Clay Museum, and other organizations are also provided. In addition, Seward Park Clay Studio provides studio space to an average of 21 artist members each year. Ceramic arts in the community is enhanced through juried, guest artist, faculty and student shows sponsored by Seward Park Clay Studio in its gallery. In recognition of the foregoing, the Premises shall be used by Seward Park Clay Studio as a ceramics and visual arts venue for public purposes and, to the extent it does not conflict with the aforementioned uses, as a recreational and community arts program facility open to and available for public use under the conditions described herein. Seward Park Clay Studio is further authorized to use the Premises to (a) carry out of its artistic purposes; (b) conduct Seward Park Clay Studio, community group and studio member meetings of all lawful kinds; and (c) engage in fundraising activities supporting the overall mission of the Seward Park Clay Studio arts venue. The City shall not charge Seward Park Clay Studio any fees in connection with the uses described above. All other uses shall pay fees and charges in accordance with such fees and charges as are established from time to time for such uses by Seward Park Clay Studio; provided, however, that the fees and charges associated with any community meeting on the Premises shall be determined in accordance with the then current SPR schedule of fees and charges applicable to such public meetings.

The Seward Park Clay Studio shall not use the Premises for any other purpose or make any other use of the Premises inconsistent with the foregoing described purposes without the prior written consent of SPR.

3.2 Use Grant Restricted. The authorized uses grant made in Section 3.1 above is subject to the City's reserved and retained right of review and approval of any changes by Seward Park Clay Studio in programs or artistic focus on the Premises, as well as any and all modifications and improvements of whatever nature that may occur thereto.

3.3 Consideration. The rights and privileges for the term specified above are given to Seward Park Clay Studio in consideration of Seward Park Clay Studio providing ceramics and visual arts programming to the general public, managing and administering the Premises, meeting its obligations under Article 5 of this Agreement to pay in full the Use Fee to the City, and providing access to user groups and individuals in accordance with Seward Park Clay Studio's policies related to fee scheduling, key control, security, maintenance and operation of the Premises.

3.4 Scheduled Hours of Use and Closures. Seward Park Clay Studio shall keep the Premises open to the public during all scheduled programming hours of operation, which hours shall be reviewed and agreed to from time to time by Seward Park Clay Studio and SPR. Seward Park Clay Studio shall post its hours of operation and schedules for classes and other events in a place and manner on the Premises that is readily visible to the public. Subject to the prior written approval of the Superintendent, Seward Park Clay Studio may for good cause close the Premises or a portion thereof for a reasonable period during its regularly scheduled hours of use. It is understood that the Premises are required to be open to the public only when classes

or events are scheduled, and that no posting of special notice is required for ordinary closure between classes or events.

The City reserves and retains the right to close the Premises at its convenience for reasons of public safety or other good cause upon a written notice given to Seward Park Clay Studio not less than seven (7) days prior to such closure or, in case of emergency, without notice of any kind.

Seward Park Clay Studio shall submit a summary of its outreach programs and uses no more than sixty (60) days after the end of its fiscal year to SPR for its records. Such a summary shall consist of classes/programs, dates, and identification of the user/groups and purposes for uses.

When there is a scheduling conflict among scheduled activities, Seward Park Clay Studio shall be responsible for resolving the conflict.

3.5 Operation and Services.

3.5.1 Except for community meetings as set forth above, all remuneration to Seward Park Clay Studio from third parties shall be based on fees and charges established from time to time by Seward Park Clay Studio that are standard in the visual/ceramic arts industry. A list of those users not providing payment shall be provided to the Department on an annual basis with a description of the category of waiver or in-kind value received in lieu of payment.

3.5.2 Seward Park Clay Studio shall maintain keys to the Premises and may distribute keys to users as appropriate. Seward Park Clay Studio shall account for and collect keys in accordance with SPR Administrative Policy 060-P 2.7.1, incorporated herein by reference.

3.5.3 (1) Seward Park Clay Studio shall provide ceramic and visual arts programming open to the public, which shall include some combination of the following:

- a. Children's clay classes;
- b. Adult ceramic classes;
- c. Summer visual arts programs for children;
- d. Master class/workshops and artist lectures
- e. Studio space for ceramic artists;
- f. Scholarships for children and adults participating in visual arts programs;
- g. Visual arts training for Seattle Public Schools students;

- h. Visual arts training for Seattle Clay Museum;
- i. After-school special visual arts programming for SPR programs at community and recreation centers;
- j. Visual arts training for public school arts teachers;
- k. Exhibitions of visual artwork; and
- l. Jobs for artists.

(2) Seward Park Clay Studio will maximize the public use of the Premises by scheduling visual arts classes, programs and events and by making the space available to other visual arts and community groups during its non-use-periods, if feasible.

3.5.3 Seward Park Clay Studio shall ensure that the supplies and materials of individual users are appropriately stored and secured in such a way as to not unreasonably inconvenience or conflict with other uses and users of the Premises, as well as for safety and equal access purposes.

3.5.4 Seward Park Clay Studio shall not permit intoxicating beverages of any kind to be used, sold, consumed or dispensed upon the Premises unless previously approved in writing by the Superintendent for such use, sale, consumption or dispensation in accordance with all applicable laws, ordinances, rules and regulations.

3.6 Seward Park Clay Studio shall employ personnel or assign volunteers in numbers sufficient to meet the artistic and other program staffing needs of the facility. All staff are subject to a satisfactory background check before being employed by Seward Park Clay Studio. Seward Park Clay Studio will provide SPR a written listing of its Board of Directors and staff at the beginning of each fiscal year, and notify SPR of changes throughout the year.

ARTICLE 4. TERM; AUTHORIZED PERIOD OF PREMISES USE

4.1 Term of Agreement. The term of this Agreement shall be for eight (8) years beginning on the Commencement Date unless terminated earlier pursuant to the provisions hereof. Provided written notice is given to SPR at least eighteen (18) months prior to the expiration of the term of this Agreement, Seward Park Clay Studio may request an extension of such term for an additional period of four (4) years. Any such extension will be subject to approval at the sole discretion of SPR.

ARTICLE 5. USE FEES; REDUCTIONS AND OFFSETS THERETO; TAXES

5.1 Use Fee. Beginning on the Commencement Date and throughout the term of this Agreement, Seward Park Clay Studio shall pay to the City on a monthly basis a Use Fee of one percent (1%) of all Gross Receipts herein, from the previous month.

5.1.1 Upon the commencement of each subsequent Seward Park Clay Studio accounting year, with each such year beginning the anniversary date of this Agreement, Seward Park Clay Studio shall implement an adjustment to the initial Use Fee of 1% per month by the same percentage that the Consumer Price Index for Urban Wage Earners and Clerical Workers (CP1-W), for the Seattle-Tacoma-Bremerton area, as published by the U. S. Department of Labor, has increased over the preceding 12-month period from May to the previous May.

5.1.2 With the approval of SPR, Seward Park Clay Studio may offset its Use Fee payment to SPR by the agreed-upon value of any SPR programming implemented by Seward Park Clay Studio. Such offsets will be called "Public Benefit" and shall be approved in writing by SPR prior to such use by Seward Park Clay Studio. Exhibit C details the Public Benefits to be provided by the Seward Park Clay Studio and the Public Benefits Reporting Requirements. The value of Public Benefits provided will be calculated by deducting the Use Fee paid from the Fair Market Rent value described in section 5.2.

5.2 Fair Market Rent and Fair Market Value Assessment. The current rental rate is \$1,705 per month. During the term of this Agreement a fair market rent value will be assessed as specified in Article 7. The assessment will evaluate the appropriate rent value of the Premises to be used to calculate the Public Benefit offsets. A state-certified real estate appraiser will conduct the assessment and provide a fair market rent for comparable spaces.

5.3 Section 5.2 above (together with its annual CPI adjustments) fairly reflects fair market rent for the Premises, taking into account, among other factors, estimated Gross Receipts hereunder and the substantial public benefits associated with Seward Park Clay Studio making a significant level of ceramics and visual arts programming available to the public throughout the term of the Agreement. Additionally, the parties acknowledge that Seward Park Clay Studio and those who use the Premises under this Agreement will not benefit from or depend on the site's waterfront park location. The parties further acknowledge that the availability of parking at the site is limited during the summer months, and that its adjacency to a residential neighborhood often results in difficult access during certain times of the day. The parties believe these factors also support their determination of fair market rental hereunder.

5.4 Taxes. In addition to the Use Fee provided under Section 5.1, Seward Park Clay Studio shall pay to SPR on or before the tenth calendar day of each month whatever leasehold excise tax is assessed pursuant to RCW Ch. 82.29A as a consequence of the use and occupancy of the Premises by Seward Park Clay Studio under this Agreement. In addition, Seward Park Clay Studio shall pay before their delinquency all other taxes that may be due and payable related to its use of the Premises under this Agreement.

5.5 Use Fee Reduction and Offset Inapplicable to Taxes. The parties agree that their determination of fair market rental hereunder shall not determine the amount of any leasehold excise tax due and payable to the City or any other tax obligation of Seward Park Clay Studio. Unless Seward Park Clay Studio is exempt from the payment of leasehold excise taxes, all such taxes shall be payable to the City in cash or other negotiable instrument.

5.6 Late and Refused Payments. Seward Park Clay Studio acknowledges that late payment to the City of the Use Fee or any other sum due to the City hereunder will cause SPR to incur costs not contemplated by this Agreement, including but not limited to processing and accounting charges and the cost of legal enforcement of this Agreement, the exact amount of which would be extremely difficult and impractical to ascertain. Therefore, in the event Seward Park Clay Studio fails to pay any sum after such amount is due to the City, Seward Park Clay Studio shall also pay to the City a rate of interest to be charged on delinquent accounts as established by Ordinance 117969, incorporated herein by reference. A Twenty Dollar (\$20) charge shall be paid by Seward Park Clay Studio to the City for each check refused payment for insufficient funds or any other reason.

ARTICLE 6. FINANCES AND PAYMENT PROCESSES

6.1 Deposit of Receipts and Payments. All City Monies of any nature whatsoever collected by Seward Park Clay Studio for the City shall be deposited in a bank or other financial institution approved by the City within forty-eight (48) hours of receipt by Seward Park Clay Studio to the credit of the City.

6.2 Payment Processes. All monthly payments due to the City hereunder, including Use Fee and leasehold excise tax payments, shall be paid no later than the tenth calendar day of each month to the Department of Parks and Recreation, Attention: Contract and Business Resources, 800 Maynard Ave. S, Room 210, Seattle, WA 98134, on forms approved by the department.

ARTICLE 7. FUTURE ANALYSIS AND CHANGE OF MARKET RENTAL VALUE OF PREMISES

SPR reserves the right to revalue or update through reappraisal the fair market rental value of the Premises, and to accordingly recalculate the Use Fee to be charged pursuant to Section 5.1 hereof, every six (6) years after the Commencement Date. Upon such revaluing and recalculation, SPR shall provide written notice to Seward Park Clay Studio of the amount by which the Use Fee has changed.

ARTICLE 8. UTILITIES AND OTHER CHARGES

8.1 Transfer of Utility Accounts. Seward Park Clay Studio shall be responsible for ensuring that all utility accounts associated with the Premises, under any and all use permits, are transferred to Seward Park Clay Studio and that such transfers are effective on and through the Commencement Date. Seward Park Clay Studio shall pay, before delinquency, all charges incurred for or in connection with the provision of telephone, electricity, gas, oil, water, sewer,

recycling, garbage collection, cable, computer and any and all other utility services to or for the Premises. Seward Park Clay Studio shall pay for all related utility activation charges.

8.2 Potential Cost-Sharing with SPR. SPR shall pay to Seward Park Clay Studio the prorated share of any such utility bill that has been reviewed and approved by SPR and that is directly related to a SPR activity on the Premises, as calculated on the percentage of square footage for any month in which SPR occupies any portion of the Premises. SPR shall remit payment to Seward Park Clay Studio at its current mailing address within 45 days of receipt of a properly documented bill from Seward Park Clay Studio with which SPR concurs.

8.3 Contracts and Meters to be in Seward Park Clay Studio's Name. All utility service contracts and utility main meters at the Premises shall be in the name of Seward Park Clay Studio. Seward Park Clay Studio shall pay all governmental charges levied on its operations on the Premises. Any required deposits for the provision of utility service of any kind to the Premises shall be paid in full by Seward Park Clay Studio.

8.4 SPR Not Liable for Utility Service Failures. SPR shall not be liable, and Seward Park Clay Studio hereby waives any claim against SPR, for the interruption for any reason whatsoever of any utility services to the Premises.

ARTICLE 9. CARE OF PREMISES

9.1 Seward Park Clay Studio's Routine Maintenance and Repair Obligation. During the term of this Agreement and any extension thereof, Seward Park Clay Studio, at no cost to the City, shall (except as otherwise provided for in Section 9.3 below) make all routine maintenance and repairs to the Premises, including but not limited to the heating, ventilating, and electrical systems, gas, boiler and plumbing, lighting, furniture, fixtures, and equipment, in accordance with all applicable statutes, City ordinances, and directions or regulations of the proper public authorities. Seward Park Clay Studio shall make sure that all production decisions regarding gas and electrical services meet applicable health, safety and fire code regulations.

9.2 Seward Park Clay Studio's General Cleaning and Janitorial Services Obligation. Seward Park Clay Studio shall keep the Premises in a neat, clean and sanitary condition, and shall provide all general cleaning and janitorial services, at no cost to the City, as may be required in and for the Premises. Seward Park Clay Studio shall be responsible for frequent trash removal and litter pickup within the Premises and on the exterior of the facility in any and all areas authorized for its exterior use under this Agreement.

9.3 SPR's Major Maintenance Obligation. SPR shall provide and be responsible for all major maintenance of the Premises, including but not limited to electrical, mechanical systems and utilities to the Bathhouse building, at no cost to Seward Park Clay Studio. SPR shall be required to make all necessary maintenance and repairs to the roof, exterior shell and exterior doors of the facility and any such repairs that may become necessary as a result of failure of the roof, exterior shell and exterior doors of the Premises.

9.4 Intrusion Alarm Installation Option. Seward Park Clay Studio shall, at its option, provide and install on the Premises, at no cost to the City, an intrusion alarm system.

9.5 Fire Suppression Systems Installation Obligation. When applicable, Seward Park Clay Studio shall provide all cooking surfaces with hood, vent, and fire suppression systems that have been approved by the Washington Survey and Rating Bureau to issue maximum fire insurance rate credit. In the event the premium for fire insurance on the Premises is increased as a result of Seward Park Clay Studio's failure to install such an approved system, Seward Park Clay Studio shall be liable for the increase.

9.6 Joint Annual Inspection of Premises; Remedial Action Obligation. Seward Park Clay Studio shall participate in an annual inspection of the Premises with the Facility Maintenance Services Division of SPR, and be responsible for taking any and all actions (other than major maintenance pursuant to Section 9.3 above) that may be required to maintain and operate the Premises in accordance with SPR standards and Seward Park Clay Studio's obligations under this Agreement.

9.7 City Remedy upon Seward Park Clay Studio's Failure to Maintain Premises. In the event Seward Park Clay Studio fails to maintain the Premises in good order, condition and repair, SPR shall give Seward Park Clay Studio notice to undertake such work as is reasonably required to maintain the Premises. In the event Seward Park Clay Studio fails to either take steps or solicit bids to commence such work within ten (10) calendar days after Seward Park Clay Studio's receipt of such notice, or if Seward Park Clay Studio fails thereafter to diligently pursue such work to completion, then SPR shall have the right, at its option and in addition to all other remedies, to undertake such work and to invoice Seward Park Clay Studio for the costs incurred by the City in connection therewith. SPR shall have no liability to Seward Park Clay Studio for any damage, inconvenience, or interference with the use of the Premises by Seward Park Clay Studio as a result of the City performing any such work.

ARTICLE 10. INDEMNIFICATION, HOLD HARMLESS AND INSURANCE

10.1 Indemnification and Hold Harmless. To the fullest extent permitted by law, Seward Park Clay Studio, its officers, agents, employees, volunteers and contractors, shall indemnify and hold harmless the City, its officers, agents, employees, volunteers and contractors, from and against any and all liability, claims, suits, actions, damages, costs or expenses (including reasonable attorney's fees and costs and all other litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation) for bodily injury or damage to property arising from or relating to the use and occupancy of the Premises by Seward Park Clay Studio, or any of its officers, agents, employees, volunteers or contractors, or from any violation of law. If any such claim, suit or action is brought against the City, its officers, agents, employees, volunteers or contractors, Seward Park Clay Studio, upon notice of the commencement thereof, shall defend the same, at no cost and expense to the City, and shall promptly satisfy any final judgment adverse to the City or to the City and Seward

Park Clay Studio jointly. The above liability shall not be diminished by the fact, if it be a fact, that any such death, injury, damage, loss, cost, or expense may have been, or may be alleged to have been, contributed to by the negligence of the City or its officers, employees, agents, volunteers and contractors; provided, however, that nothing contained in this section shall be construed as requiring Seward Park Clay Studio to indemnify the City against liability for damage arising out of bodily injury to a person or damage to property caused by or resulting from the sole negligence of the City or any of its officers, employees, agents, volunteers and contractors.

10.2 Survival of Indemnification Obligation. The indemnification and hold-harmless obligations of Seward Park Clay Studio hereunder shall survive the expiration or earlier termination of this Agreement.

10.3 Insurance to be secured by Seward Park Clay Studio. Prior to the commencement of any activity on the Premises under this Agreement, Seward Park Clay Studio shall secure and maintain, at no expense to City, a policy or policies of insurance as described in Exhibit "B."

ARTICLE 11. CITY'S CONTROL OF PREMISES AND VICINITY

All common and other facilities provided by the City in or about the Premises, including remaining portions of the Bathhouse facility and Bathhouse parking areas, are subject to the exclusive control and management by the City. Accordingly, the City may do any and all of the following (among other activities in support of SPR or other municipal objectives) without incurring any liability whatsoever to Seward Park Clay Studio:

11.1 Changes to Bathhouse facility and property. Increase, reduce, or change in any manner whatsoever the number, dimensions and locations of the walks, buildings, and parking areas in the vicinity of the Premises;

11.2 Traffic Regulation. Regulate all traffic within and adjacent to the Premises, including the operation and parking of vehicles of the Seward Park Clay Studio and its invitees, employees, and patrons, except that SPR shall (a) reserve parking on the east side of the building for Seward Park Clay Studio staff parking in the parking area adjacent to the Premises and (b) permit Seward Park Clay Studio access to the loading zone in the rear of the building.

11.3 Display of Promotional Materials. Erect, display and remove promotional exhibits and materials and permit special events on property adjacent to the Premises;

11.4 Promulgation of Rules. Promulgate reasonable rules and regulations from time to time regarding the use and occupancy of any SPR property, including but not limited to the Premises.

11.5 Change of Businesses. SPR may at any time may change the size, number, and type and identity of concessions, stores, businesses, programs and operations being conducted or undertaken in the vicinity of the Premises.

11.6 SPR Use. SPR shall have access to the Premises at no charge for small community hearings and other SPR staff meetings on an as-available basis by contacting Seward Park Clay Studio at least two (2) weeks in advance of the proposed use date. SPR shall provide qualified staffing or pay for opening and closing charges if the use of the facility is on a day or during a time that Seward Park Clay Studio does not open the facility and SPR staff are not available to do so. Such use shall not entitle SPR to use any Seward Park Clay Studio interior studio equipment during its use without the prior approval and supervision of Seward Park Clay Studio staff.

ARTICLE 12. ALTERATIONS OR IMPROVEMENTS

Seward Park Clay Studio shall not make any alteration, addition, renovation, or improvement in or to the Premises without first obtaining the written consent of SPR. All alterations, additions, renovations, or improvements that are made shall be at the sole cost and expense of Seward Park Clay Studio and shall (a) remain in and be surrendered with the Premises as a part thereof at the expiration or earlier termination of this Agreement or (b) be removed from the Premises by Seward Park Clay Studio, at the sole discretion of SPR. SPR reserves the right to review and approve Seward Park Clay Studio's plans, specifications, and proposed contractors for any and all such alterations, additions, renovations and improvements. SPR reserves the right to impose restrictions or conditions upon its consent to any aspect of the above work, including the requirement that Seward Park Clay Studio appropriately bond such work and enter into written contracts for such work in a form approved by SPR.

ARTICLE 13. DAMAGE OR DESTRUCTION

In the event the Premises are partially or wholly destroyed or damaged by fire, earthquake, or other casualty, the City at its sole discretion may either repair or rebuild the Premises, or any portion thereof, and in the meantime the Use Fees payable by Seward Park Clay Studio hereunder shall be abated in the same proportion as the unusable portion of the Premises bears to the whole Premises. Unless SPR, within sixty (60) calendar days after the happening of any such damage or casualty, gives notice to Seward Park Clay Studio of the City's election to restore the Premises, this Agreement shall automatically terminate. Notwithstanding the foregoing, if a loss to any portion of the Premises effectively renders the entire Premises unusable, then the Use Fees payable by Seward Park Clay Studio hereunder shall be abated in full and Seward Park Clay Studio may elect to terminate this Agreement. In no event shall the City be required to repair or replace any equipment, inventory, fixture, or other personal property located on the Premises and owned or maintained by Seward Park Clay Studio or other users of the Premises.

ARTICLE 14. CONDEMNATION

If any part of the Premises shall be taken or condemned, and a part thereof remains that is susceptible of occupation hereunder, this Agreement shall, as to the part so taken, terminate as

of the date title shall vest in the condemner, and the Use Fee payable hereunder shall be adjusted so that Seward Park Clay Studio shall be required to pay for the remainder of the term of this Agreement only such portion of the Use Fee as the number of square feet in the part remaining after the condemnation bears to the number of square feet of the entire Premises immediately prior to the condemnation; but in such event SPR shall have the option to terminate this Agreement by notice to Seward Park Clay Studio within thirty (30) days of the date when title to the part so condemned vests in the condemner. If part or all of the Premises is taken or condemned, all compensation awarded upon such condemnation or taking shall go to the City, and Seward Park Clay Studio shall have no claim to any of the same, and Seward Park Clay Studio hereby irrevocably assigns and transfers to the City any right to compensation or damages payable by reason of the condemnation of all or a part of the Premises.

ARTICLE 15. COMPLIANCE WITH LAW

15.1 General Requirements. Seward Park Clay Studio, at no cost to the City, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter and Municipal Code of the City of Seattle; and the rules, regulations, orders and directives of their administrative agencies and the officers thereof, as such enactments now exist or are hereafter enacted or promulgated. Whenever Seward Park Clay Studio is informed of any violation of any such law, ordinance, rule, regulation, license, permit or authorization committed by it or any of its officers, employees, volunteers, contractors, subcontractors, agents or invitees, Seward Park Clay Studio shall immediately desist from and/or prevent or correct such violation.

15.2 Licenses and Other Authorizations. Seward Park Clay Studio, at no cost to the City, shall secure and maintain in full force and effect during the term of this Agreement, all required licenses, permits and similar legal authorizations, and comply with all requirements thereof, and shall submit to SPR evidence of Seward Park Clay Studio's satisfaction of all such requirements prior to the commencement of any modification of the Premises. Seward Park Clay Studio shall be responsible for payment of all fees and charges incurred in obtaining any required permits or other governmental approvals and for obtaining a certificate of occupancy prior to the use or occupancy of any modified portion of the Premises.

15.3 Equality of Treatment. Seward Park Clay Studio shall conduct its business in a manner that assures fair, equal and nondiscriminatory treatment at all times in all respects to all persons in accordance with all applicable laws, ordinances, resolutions, rules, and regulations. Any failure to comply with this provision shall be a material breach of this Agreement.

15.4 Nondiscrimination.

Seward Park Clay Studio shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code (SMC), as they may be amended; and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

15.5 Americans with Disabilities Act Compliance.

Seward Park Clay Studio, at no cost to the City, shall comply with all requirements of the Americans with Disabilities Act for existing buildings, as now or hereafter amended, and all rules and regulations implementing the same.

15.6 Prevailing Wages.

Seward Park Clay Studio agrees that the undertaking of any construction, alteration, improvement, enlargement, repair, demolition, maintenance, and the performance of janitorial service activity by janitors, rug shampooers, floor waxers, and window cleaners is subject to the requirements of RC.W. Ch. 39.12 (Prevailing Wages on Public Works), as amended or supplemented. Seward Park Clay Studio agrees to meet all such requirements of RCW 39.12.

15.7 Environmental Standards.

15.7.1 General. Seward Park Clay Studio shall not commit or suffer any waste to be dumped upon the Premises and will not do or permit to be done in or about the Premises anything that is inconsistent with this Agreement or the Seattle Municipal Code, or any City department rule or regulation as now existing or hereafter amended or any activity that is inconsistent with the use authorized or that will be dangerous to life or limb, or that will increase any insurance rate upon the Premises.

15.7.2 Hazardous Materials. Seward Park Clay Studio shall not cause to occur upon the Premises or permit the Premises to be used to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process any hazardous substances, as defined by any state or federal law, except in compliance with all applicable Laws and Regulations. If requested Seward Park Clay Studio shall maintain and provide the City with a (USEPA) waste generator number, and with copies of all Material Safety Data Sheets (MSDS), and annual dangerous waste reports, environmentally- related regulatory permits or approvals and any correspondence Seward Park Clay Studio receives from, or provides to, any governmental unit or agency in connection with the handling of hazardous substances or the presence, or possible presence, of any hazardous substance.

15.7.3 Environmental Testing. Seward Park Clay Studio shall permit the City access to the Premises upon reasonable notice for the purpose of conducting annual inspections and

environmental testing at the City's expense. Seward Park Clay Studio shall not conduct, or permit others to conduct, environmental testing on the Premises without the Superintendent's prior written approval. Seward Park Clay Studio shall provide a copy of all test results to the City upon receipt.

15.7.4 Violation of Environmental Standards; City's Remedial Rights. If Seward Park Clay Studio violates any of the conditions concerning the presence or use of hazardous substances or the handling or storing of hazardous wastes, Seward Park Clay Studio shall promptly take such action as is necessary to mitigate and correct the violation. If Seward Park Clay Studio does not act in a prudent and prompt manner, the City reserves the right, but not the obligation, to come onto the Premises and to take such action as deemed necessary to ensure compliance or to mitigate the violation. In addition, the City shall be entitled to full reimbursement from Seward Park Clay Studio for any costs resulting from the violation including, but not limited to, costs of clean-up or other remedial activities, fines, penalties assessed directly against the City, injuries to third persons or other properties, and loss of revenues resulting from an inability to allow other persons or entities to use or occupy the Premises due to its environmental condition as the result of Seward Park Clay Studio's violation (even if such loss of revenue occurs after the expiration or earlier termination of this Agreement).

ARTICLE 16. LIENS AND ENCUMBRANCES

Seward Park Clay Studio shall keep the Premises free and clear of any liens and encumbrances arising or growing out of its use and occupancy of the Premises. At the City's request, Seward Park Clay Studio shall furnish the City written proof of payment of any item that would or might constitute the basis for such a lien on the Premises if not paid.

ARTICLE 17 VISUAL ARTIST RIGHTS ACT

17.1. Installation or Integration of Any Work of Visual Clay on Premises

17.1.1 Reservation of Rights by City; Prohibition Against Installation or Integration of Any Work of Visual Clay on Premises Without Superintendent's Prior Express Written Consent. The City reserves to and for itself the right to approve or disapprove of the installation or integration on or into the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, and to approve or disapprove of each and every agreement regarding any such installation or integration on or into the Premises of a work of visual art. Seward Park Clay Studio shall not, without the prior, express, written consent of the Superintendent, install on or integrate into, or permit any other person or entity to install on or integrate into, any portion of the Premises any "work of visual art." The Superintendent's consent to the installation of any such artwork may be granted, granted upon one or more conditions, or withheld in the Superintendent's discretion.

17.1.2 Seward Park Clay Studio's Indemnification of City Against Liability under Visual Artists Rights Act of 1990. If the Superintendent has not given such official's consent to the installation

or integration of any work of visual art on or into the Premises, Seward Park Clay Studio shall protect, defend, and hold the City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of the installation or integration during the term of this Agreement of that work of visual art on or into any portion of the Premises. This Indemnification obligation shall exist regardless of whether Seward Park Clay Studio has consented to or has prior knowledge of such installation or integration. The indemnification obligation of this Section shall survive the expiration or earlier termination of this Agreement.

ARTICLE 18. RECORDS, BOOKS AND DOCUMENTS FOR CITY ACCESS AND AUDIT

18.1 Seward Park Clay Studio to Maintain Books and Records. Seward Park Clay Studio shall maintain books, records, documents and other evidence of accounting procedures and practices, which sufficiently and properly reflect all income of any kind received by Seward Park Clay Studio, including but not limited to Gross Receipts and City Monies, as well as all direct and indirect costs of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit in King County by personnel duly authorized by SPR, the City, the Office of the State Auditor, and other officials so authorized by law, rule, Regulation, or contract. Seward Park Clay Studio shall submit an annual financial report for Seward Park Clay Studio operations prepared by an independent certified public accounting firm to SPR within ninety (90) days after the end of each fiscal year, except during the first two years of operation at the Premises a financial report may be compiled by a reputable accounting firm or bookkeeper.

18.2. Audit Right to be Ensured by Seward Park Clay Studio in Subordinate Use Arrangements. Seward Park Clay Studio shall ensure that such inspection, audit and copying right of the City is a condition of any license, contract or other arrangement under which any other person who is not a Seward Park Clay Studio employee or other entity is permitted to carry on a performing arts business or other program activity in, on or from the Premises. Such audit right of the City shall be limited to activities occurring on the Premises.

18.3 Overpayments and Underpayments. In the event that through any audit, Seward Park Clay Studio is found to have made any overpayment or underpayment hereunder, the Superintendent shall notify Seward Park Clay Studio of the amount of the overpayment or underpayment. Any overpayment shall be a credit against any fees and charges subsequently due or shall be refunded to Seward Park Clay Studio, at its option; underpayments shall be immediately due and payable and shall be delinquent if not paid within ten (10) days after the date of such notice.

18.4 Seward Park Clay Studio to Assist City in Providing Data to State and Federal Governments. Upon the request of the City, Seward Park Clay Studio shall promptly provide, at Seward Park Clay Studio's sole expense, necessary data to enable the City to fully comply with any and every requirement of the State of Washington or the United States of America for

information or reports relating to this Agreement and to Seward Park Clay Studio's use of the Premises.

18.5 Retention of Records. Seward Park Clay Studio shall retain all books, records, documents, and other material relevant to this Agreement for six (6) years after the expiration or termination of this Agreement, and make them available for inspection by persons authorized under this Agreement at such times and on such forms as the City may require. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 19. ACCESS

SPR shall have the right to inspect the Premises at all reasonable times and enter the same for purposes of cleaning, repairing, altering, or improving the Premises with reasonable notification to Seward Park Clay Studio, but nothing contained in this Agreement shall be construed so as to impose any obligation on SPR to make any repair, alteration, or improvement, unless set forth by this Agreement. Seward Park Clay Studio shall not install any new lock or bolt on any exterior door without SPR's written consent. SPR shall have the right to show the Premises to other prospective users at its convenience, with reasonable notification to Seward Park Clay Studio.

ARTICLE 20. NAME, SIGNS OR ADVERTISING

20.1 The Seward Park Clay Studio Name. The Seward Clay Studio shall operate and incorporate its organization under the name "Seward Park Clay Studio, Inc." and may not refer to itself as the "Seattle Department of Parks and Recreation" or the City of Seattle on any correspondence, merchandise, or marketing information.

20.2 Seward Park Clay Studio Signs. Seward Park Clay Studio shall have the right upon written approval from SPR to install a sign on the Premises that identifies the same for Seward Park Clay Studio purposes. Any such sign shall include the name of the Premises, the name of Seward Park Clay Studio, and shall be constructed in a style and size consistent with architectural integrity of the facility and the signage policy adopted by SPR. The parties agree that the following wording shall satisfy these requirements:

"The Seward Park Clay Studio at the Seward Park Bathhouse"

SPR shall have the right to post its building name, logo and name in an appropriate size on the exterior of the building in a manner compatible with the signage it may approve or disapprove for Seward Park Clay Studio.

20.3 Bulletin Boards/Other Interior Signs or Postings. Seward Park Clay Studio shall have the right to install bulletin boards and other interior signage or postings within the Premises, and to display community-related notices, posters, and similar materials thereon as related to Seward Park Clay Studio's operation of the Premises.

20.4 No Other Signage on Premises. Other than the SPR-approved exterior signage and interior bulletin boards and other interior signage permitted by Sections 20.2 and 20.3, Seward Park Clay Studio shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever exterior to the Premises without first obtaining SPR's written consent thereto. Any consent so obtained from SPR shall be with the understanding and agreement that Seward Park Clay Studio will remove the same at the expiration or earlier termination of the Term herein created and repair any damage or injury to the Premises caused thereby.

ARTICLE 21. WASTEFUL AND DANGEROUS USE

Seward Park Clay Studio shall not commit or suffer any waste upon the Premises and will not do or permit to be done in or about the Premises anything that is inconsistent with this Agreement or the Park Code as now existing or hereafter amended, or any activity that is inconsistent with the uses authorized by this Agreement or that will be dangerous to life or limb, or any activity that will increase any insurance rate upon the Premises.

ARTICLE 22. TAXES

The Use Fee under this Agreement is exclusive of any sales, business, occupation or other state tax levied or assessed as a consequence of this Agreement or any activity of Seward Park Clay Studio thereunder. Seward Park Clay Studio shall pay before delinquency any and all such taxes, assessments, license fees and public charges levied, assessed, or imposed during the Term of this Agreement upon Seward Park Clay Studio's activities hereunder or its fixtures, furniture, and personal property installed or located in the Premises or upon its interest in this Agreement or the Premises.

ARTICLE 23. INSOLVENCY

Either (i) the appointment of a receiver to take possession of all or any part of the assets of Seward Park Clay Studio, or (ii) the general assignment by Seward Park Clay Studio for the benefit of creditors, or (iii) any action taken or suffered by Seward Park Clay Studio under any insolvency or bankruptcy act shall, if such appointment, assignment, or action continues for a period of thirty (30) days, constitute a breach of this Agreement by Seward Park Clay Studio, and SPR may at its election and without notice terminate this Agreement; and in that event, SPR shall be entitled to immediate possession of the Premises. In the event any provision of this Article is contrary to any applicable law, such provision shall be of no force or effect.

ARTICLE 24. SUBORDINATE USES

24.1 Seward Park Clay Studio Authorized to Permit Subordinate Uses of Premises. Two of the major objectives of this Agreement are the provision of accessible ceramics and visual arts programming to the general public and ceramic arts space for Seward Park Clay Studio. Accordingly, Seward Park Clay Studio shall have the right to allow the subordinate use of the Premises by other ceramic arts groups for small meetings and related activities.

24.2 No Mortgaging or Transferring of Agreement or Seward Park Clay Studio's Interest Therein. Except for the uses permitted herein, Seward Park Clay Studio shall not lease, transfer, assign, mortgage, hypothecate or convey this Agreement or any interest therein, in whole or in part, or lease or license, use or occupancy of the Premises or any part thereof or any of the rights or privileges or any portion of the Premises granted under this Agreement to any other person, firm or corporation without the prior written authorization of SPR, which authorization may be granted, withheld, or conditioned in each instance in the sole discretion of the Superintendent. This prohibition against transfers and assignments includes any transfer or assignment by operation of law. Neither the rights and privileges granted hereunder nor the Premises are assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceedings in insolvency or bankruptcy, either voluntary or involuntary, or receivership proceedings. Any assignee approved by SPR must accept and assume in writing all the terms and conditions of this Agreement to be kept and performed by Seward Park Clay Studio. Any transfer of this Agreement from Seward Park Clay Studio by merger, consolidation, transfer of assets, or liquidation shall constitute an assignment for purposes of this Agreement. SPR consent to any assignment or transfer shall not operate as a waiver of the necessity for consent to any subsequent assignment or transfer, and the terms of such consent shall be binding upon any person or entity using or occupying the Premises by, under, or through Seward Park Clay Studio.

ARTICLE 25. TERMINATION

25.1 Seward Park Clay Studio Defaults in Performance Constitute Material Breach. In the event that Seward Park Clay Studio defaults in the performance of any of the material terms, provisions, covenants, and agreements on Seward Park Clay Studio's part to be kept, observed, and performed under this Agreement; or if Seward Park Clay Studio abandons, deserts, vacates, or otherwise removes its operations from the Premises without the prior consent of the Superintendent, then, the City, at the option of the Superintendent at any time thereafter, may declare this Agreement to have been materially breached. In addition, the occasioning of an "Event of Default" as defined in any funding agreement between the City and Seward Park Clay Studio regarding a project to be undertaken under any construction agreement shall also constitute a material breach under this Agreement. Furthermore, if Seward Park Clay Studio becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or

liquidated, voluntarily or otherwise, such action shall constitute a material breach of this Agreement.

25.2 Process for Termination of Agreement.

25.2.1 For Cause. Either party may terminate this Agreement in the event that the other party has materially breached this Agreement and such breach has not been corrected to the reasonable satisfaction of the dissatisfied party within thirty (30) days after notice of breach has been provided to such other party ; provided , however, that if the nature of such party's obligation is such that more than thirty (30) days are required for performance , then such party shall not be in default if it commences performance within such thirty (30)-day period and thereafter diligently prosecutes the same to completion.

25.2.2 Termination for Convenience. Either party may terminate this Agreement, for any reason or for no reason, upon thirty (30) days prior written notice to the other party delivered in accordance with Section 25.3 stating such party's intention to terminate this Agreement and the effective date of such termination.

25.2.3 For Reasons Beyond the Control of the Parties. Either party may terminate this Agreement without recourse by the other party where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as but not limited to: acts of nature; war or warlike operations; civil commotion; riot; labor dispute including strike, walkout, or lockout; sabotage; or superior governmental regulation or control.

25.3 Notice of Termination. Notice of termination pursuant to Subsections 25.2.1 and 25.2.3 shall be in writing from the party terminating this Agreement to the other party not less than five (5) days prior to the effective date of termination.

25.4 Re-entry by City Upon Termination. Upon the termination of this Agreement, the City may re-enter said Premises using such force as may be required. Notwithstanding such re-entry and anything to the contrary in this Agreement, in the event of the termination of this Agreement because of the material breach thereof by Seward Park Clay Studio, the liability of Seward Park Clay Studio for the Use Fees provided herein shall not be extinguished for the balance of the term of this Agreement.

25.5 Superintendent to Determine for City Existence of Seward Park Clay Studio's Breach. The Superintendent shall have the right to determine, on the City's behalf, whether Seward Park Clay Studio has defaulted in the performance of its obligations hereunder or has otherwise materially breached any of the terms and conditions of this Agreement.

25.6 City Remedies Upon Seward Park Clay Studio's Material Breach. In the event of the City's termination of this Agreement for cause, SPR, in addition to other rights or remedies that it may have, shall have the right to re-enter said Premises and to make necessary alterations and repairs to restore the Premises to the condition desired by SPR, and authorize others to

temporarily use and occupy the Premises. Seward Park Clay Studio shall pay to SPR, as soon as ascertained, the costs and expenses incurred by SPR in authorizing such other use and occupancy and in making such alterations or repairs.

ARTICLE 26. CANCELLATION

In the event Seward Park Clay Studio determines, at any time during the term of this Agreement, that the Premises are no longer required for its use, this Agreement shall be subject to cancellation upon ninety (90) days' prior written notice by Seward Park Clay Studio to SPR.

In the event that SPR determines that, at any time during the term of this Agreement, that it desires to cancel this Agreement regardless of cause or fault, this Agreement shall be subject to cancellation upon ninety (90) days' prior written notice by SPR to Seward Park Clay Studio.

ARTICLE 27. VACATING OF PREMISES

Upon the expiration or earlier termination of this Agreement, all right, title and interest of Seward Park Clay Studio in the Premises, including but not limited to the improvements made thereto and fixtures installed therein pursuant to any and all prior permits or agreements, and all items acquired by Seward Park Clay Studio with grant funds provided by or through SPR, shall vest in the City, without any action of either party hereto. Upon the expiration or earlier termination of this Agreement, Seward Park Clay Studio shall return the Premises, together with all capital improvements made thereto and fixtures installed therein including but not limited to the improvements made thereto and fixtures installed therein pursuant to any construction agreement, and all items acquired by Seward Park Clay Studio with grant funds provided by or through SPR, in good order and condition, except for normal wear and tear, unless the City otherwise consents, in writing, to their removal by Seward Park Clay Studio; provided, however, that the provisions of this Article shall not apply to the following improvements made by Seward Park Clay Studio: the kiln(s) and associated fixtures strictly related to the making, maintaining and use of the kiln(s) which Seward Park Clay Studio can remove without negatively affecting the structural integrity or preexisting appearance of the Premises or its use as a multi-purpose facility. On or before the expiration or earlier termination of this Agreement, Seward Park Clay Studio shall remove from the Premises all items of personal property.

ARTICLE 28. REMOVAL OF SEWARD PARK CLAY STUDIO'S PROPERTY IN PREMISES

Upon the entry into or the taking possession of the Premises, following the expiration or earlier termination of this Agreement, SPR shall have the right, but not the obligation, to remove from the Premises all personal property located therein, and may store the same in any place selected by SPR, including but not limited to a public warehouse, at the expense and risk of the owner(s) of such property, with the right to sell such stored property, without notice to Seward Park Clay Studio or such owner(s), after it has been stored for a period of thirty (30) days or more. The proceeds of such sale shall be applied first, to the cost of such sale; second, to the payment of the charges for storage, if any; and third, to the payment of any other sums of money that may be due from Seward Park Clay Studio to the City; the balance, if any, shall be paid to Seward Park Clay Studio.

ARTICLE 29. NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations under this Agreement by either party to the other shall be in writing and shall be sufficiently given if either served upon the other party or sent via the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed as follows:

If to Seward Park Clay Studio:

Executive Director
Seward Park Clay Studio
5900 Lake Washington Blvd. S
Seattle, WA 98118

If to the City:

Seattle Parks and Recreation
Contracts Administration and Support Office
ATTN: Contract Manager
800 Maynard Ave. S, #300
Seattle, WA 98134
Telephone: 206-684-8001 / Fax: 206-233-3949

or to such other address as either party hereto may specify, in writing.

ARTICLE 30. MISCELLANEOUS

30.1 Captions. The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Agreement.

30.2 Time. Time is of the essence.

30.3 Partial Invalidity. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be found or held to be invalid or unenforceable, the remainder of this Agreement, and the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

30.4 Binding Effect. The provisions, covenants, and conditions contained in this Agreement are binding upon the parties hereto and their legal representatives, successors, assigns and subsidiaries.

30.5 Applicable Law. This Agreement shall be interpreted under the laws of the State of Washington.

30.6 Jurisdiction and Venue. The jurisdiction and venue for any litigation between the parties regarding this Agreement or any question, claim, loss, or injury arising hereunder shall be the Superior Court of the State of Washington for King County.

30.7 No Partnership or Joint Venture Created. The City does not by this Agreement, in any way or for any purpose, become a partner or joint venture of Seward Park Clay Studio in the conduct of its business or otherwise.

30.8 City's Remedies Cumulative. The City's rights under this Agreement are cumulative; failure on the part of the City to exercise promptly any rights given hereunder shall not operate to forfeit any such rights. The City shall also have any other remedy given by law. The use of one remedy shall not be taken to exclude or waive the right to use another.

30.9 Amendments. No modification of this Agreement shall be binding upon the City or Seward Park Clay Studio unless reduced to writing and signed by an authorized representative of each of the parties hereto.

30.10 Force Majeure. Any delay in or failure of performance by City or Seward Park Clay Studio shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseen and beyond the control of the party ("Force Majeure").

30.10.1 Acts of Force Majeure include, but are not limited to:

- (1) Acts of Nature;
- (2) Acts of war or public rebellion;
- (3) Fire or other casualty for which neither party is responsible;

- (4) Quarantine or epidemic;
- (5) Strike or defensive lockout;
- (6) Unusually severe weather conditions which could not have been reasonably anticipated; and
- (7) Unusual and unforeseen delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to City was available at the time the delay became foreseeable or at any later time when delay could have been avoided by prompt action.

30.10.2 The existence of more than a Force Majeure event on any single day shall not give cause for the extension of the period of performance beyond that one day.

30.11 No Third Party Rights. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation that is not a party hereto nor shall any person, firm, organization or corporation other than a party hereto have any right or cause of action hereunder.

30.12 Effectiveness of Agreement. This Agreement shall become effective as an Agreement only upon approval by the Seattle City Council and its execution by an authorized representative of each party.

30.13 No Waivers. No action other than a written document from the Superintendent specifically so stating shall constitute a waiver by City of any particular breach or default by Seward Park Clay Studio, nor shall such a document waive any failure by Seward Park Clay Studio to fully comply with any other term or condition of this Agreement, irrespective of any knowledge any City officer or employee may have of such breach, default, or noncompliance. City's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future.

30.14 Appendices and Exhibits. The following documents are attached hereto and hereby incorporated into this Agreement as if set forth in full herein:

Exhibit A: Premises Map

Exhibit B: Insurance Requirements

30.15 Entire Agreement. This Agreement and all attachments and exhibits pertaining to same constitute the entire agreement and understanding of the parties with respect to the subject matter hereof. This Agreement supersedes all prior oral or written understandings, agreements, promises or other undertakings between the parties regarding the subject matter

hereof. The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of the Agreement are not to be construed against any party on the basis of such party's preparation of the same.

IN WITNESS WHEREOF, the parties hereto have caused this Use and Occupancy Agreement to be executed by their respective representative:

CITY:

THE CITY OF SEATTLE
Department of Parks and Recreation

By: _____

Date: _____

By: _____

Print Name: Jesús Aguirre

Title: Superintendent

Department of Parks and Recreation

LESSEE:

SEWARD PARK CLAY STUDIO, INC.
A Washington nonprofit corporation

By: _____

Date: _____

By: _____

Print Name: _____

Title: _____

Seward Park Clay Studio, Inc.

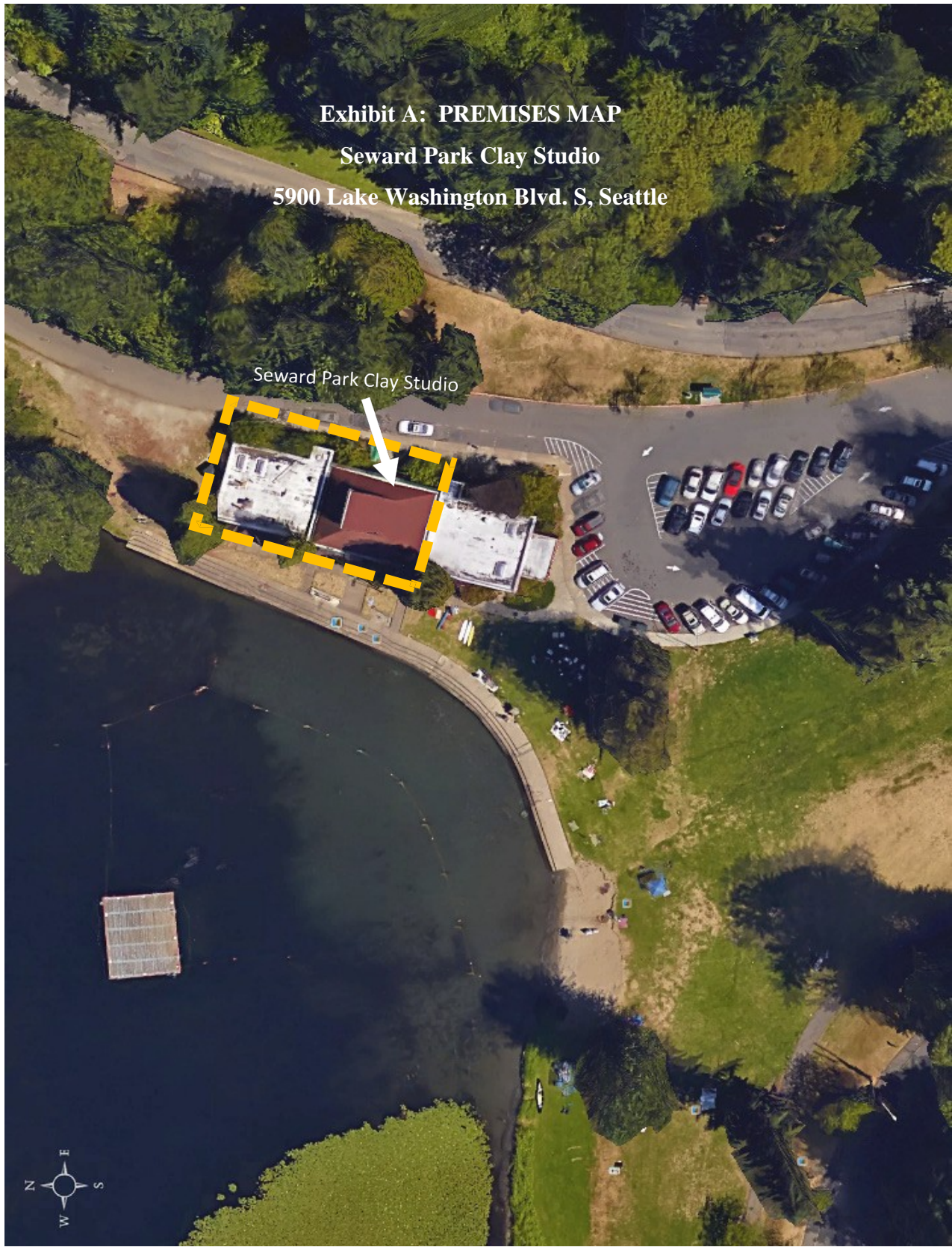


EXHIBIT B

INSURANCE

1. Furnished Coverages and Limits of Liability: Lessee shall, at no expense to the City, maintain, and cause its subtenant(s), if any, to maintain in full force and effect the following minimum limits of insurance, and adhere to all terms and conditions below, at all times beginning on the Commencement Date and ending on the Expiration Date of this Lease:

A. Commercial General Liability (CGL) written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability:

\$1,000,000 per Occurrence

\$2,000,000 General Aggregate

\$2,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal/Advertising Injury Liability

\$ 1,000,000 Damage to Premises Rented to You

Employers Liability / Washington Stop

\$1,000,000 Each Accident / Each Disease / Policy Limit

Alternatively, may be evidenced as Employer's Liability insurance under Part B of a Workers Compensation insurance policy.

Coverage shall include: Premises and Operations; Broad Form Property Damage (Including Completed Operations); Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract); Personal Injury and Advertising Liability; Independent Contractors; Severability of Interest Clause; Waiver of Subrogation endorsement in favor of Owner as required by contract; General Aggregate Limits of Insurance shall apply separately; "Claims Made" and "Modified Occurrence" policy forms are not acceptable.

The limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by Lessee, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by Lessee regarding this Agreement, nor (2) construed as limiting the liability of any of Lessee's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

- B. Automobile Liability insurance** at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased or hired vehicles as applicable, with a minimum limit of \$1,000,000 each accident for bodily injury and property damage.
- C. Workers’ Compensation** insurance securing Lessee’s liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington.
- D. Umbrella or Excess Liability** insurance if and as necessary to maintain total CGL and Automobile Liability insurance limits of \$5,000,000 Each Occurrence and be no less broad than coverages described above.
- E. Property Insurance** under which the Lessee’s furniture, trade fixtures, equipment and inventory (“Business Personal Property”) and all alterations, additions and improvements that Lessee makes to the Premises are insured throughout the Lease Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (earthquake optional), not less broad than provided by the insurance industry standard “Causes of Loss - Special Form” (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises; (iv) loss from business interruption or extra expense, with sufficient coverage to provide for the payment of Rent and Additional Charge and other fixed costs during any interruption of Lessee’s business. Coverage shall contain a waiver of coinsurance or agreed amount endorsement(s). City shall be named as a loss payee, as its interest may appear, as respects property insurance covering the alterations, additions and improvements under such policy.
- F.** In the event that the City deems insurance to be inadequate to protect Lessee and the City, Lessee shall increase coverages and/or liability limits as the City shall deem reasonably adequate within sixty (60) days after the date of written notice.

2. Terms and Conditions for Lessee’s Insurance.

- A. The City of Seattle as Additional Insured:** The CGL insurance and, in addition, Excess and/or Umbrella liability insurance, if any, shall include “The City of Seattle, its officers, officials, employees, agents and volunteers” as additional insureds. Lessee’s insurance shall be primary and non-contributory to any insurance maintained by or available to the City. The term “insurance” in this paragraph shall include insurance, self-insurance (whether funded or unfunded), alternative risk transfer techniques, capital market solutions or any other form of risk financing.
- B. Required Separation of Insured Provision; Cross-Liability Exclusion and other Endorsements Prohibited:** Lessee’s insurance policy shall include a “separation of insureds” or “severability” clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer’s liability. Lessee’s insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the Lessee’s insurance policy on the basis that the coverage or claim is brought by

an insured or additional insured against an insured or additional insured under the policy. Lessee's CGL policy shall NOT include any of the following Endorsements (or their equivalent endorsement or exclusions): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer's Liability exclusion, (e) any "Insured vs. Insured" or "cross-liability" exclusion, and (f) any type of punitive, exemplary or multiplied damages exclusion. Lessee's failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Agreement with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by Lessee or reduced and/or offset against the Agreement.

- C. Cancellation Notice: Coverage shall not be cancelled without forty-five (45) day written notice of such cancellation, except ten (10) day written notice as respects cancellation for non-payment of premium, to the City at its notice address except as may otherwise be specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer). The City and the Lessee mutually agree that for the purpose of RCW 48.18.290 (1) (b), for both liability and property insurance the City is deemed to be a "mortgagee, pledge, or other person shown by (the required insurance policies) to have an interest in any loss which may occur thereunder."
- D. Minimum Security Requirements: Each insurance policy required hereunder shall be (1) subject to reasonable approval by City that it conforms with the requirements of this Section, and (2) be issued by an insurer rated A-VIII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).
- E. Deductible or Self-Insured Retention: Any deductible or self-insured retention ("S.I.R.") must be disclosed to, and shall be subject to reasonable approval by, the City. Lessee shall cooperate to provide such information as the City may reasonably deem to be necessary to assess the risk bearing capacity of the Lessee to sustain such deductible or S.I.R. The cost of any claim falling within a deductible or S.I.R. shall be the responsibility of Lessee. If a deductible or S.I.R. for CGL or equivalent insurance is not "fronted" by an insurer but is funded and/or administered by Lessee or a contracted third party claims administrator, Lessee agrees to defend and indemnify the City to the same extent as the City would be protected as an additional insured for primary and non-contributory limits of liability as required herein by an insurer.

3. City's Property Insurance Coverage and Limits.

- A. City will maintain at its expense Property Insurance or self-insurance under which the Premises, excluding Lessee's Business Personal Property and Tenant Improvements, are insured throughout the Lease Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (including earthquake), not less broad than provided by the insurance industry standard "Causes of Loss - Special Form (ISO form CP 1030 or

equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises. City's Property Insurance currently is subject to a \$250,000 deductible for most claims for which Lessee shall be responsible only to the proportional extent to which the loss or damage is attributable to Lessee's negligent acts that are, or should be, covered by Tenant's Fire/Tenant Legal Liability insurance.

- B. During such time as Lessee is engaged in the performance of the Improvements or other renovation of the Premises, the Lessee shall maintain in full force and effect "All Risks" Builder's Risk Property insurance or equivalent for the portion of the Premises under renovation, including fire and flood, on a replacement cost new basis subject to a deductible of no more than \$50,000 each loss. In the event of a claim under the builder's risk policy, Lessee or its contractor(s) shall be responsible for paying any deductible under the policy if Lessee or any of its agents, employees, or contractors is responsible for the loss or damage. It shall be Lessee's responsibility to properly coordinate with the City's Risk Management Division the placement of Builder's Risk Property insurance prior to any new construction on, or structural alteration of, the Premises.
- C. The City may change the terms of its insurance in Sections 3.A. and 3.B. at any time based on market conditions, with no compensation due to the Lessee.

4. Waiver of Subrogation. Unless such waiver would void the property insurance coverage to be provided pursuant to this section, the City and Lessee waive all subrogation rights each may have against the other, or any subtenant, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Premises, except such rights as they have to proceeds of such insurance held by the City or the Lessee or both as fiduciary. This waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, whether or not the person or entity paid the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged

5. Evidence of Insurance. On or before the Commencement Date, and thereafter not later than the last business day prior to the expiration date of each such policy, the following documents must be delivered to City at its notice address as evidence of the insurance coverage required to be maintained by Lessee:

- A. Certification of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein; and
- B. A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements;
- C. A copy of the CGL insurance policy provision(s) and endorsements expressly including the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured

or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement;

- D. Pending receipt of the documentation specified in this Exhibit, Lessee may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

Evidence of Insurance as set forth above, shall be issued to and the certificate holder shall be:

The City of Seattle c/o Seattle Parks and Recreation
800 Maynard Avenue South, #300
Seattle, WA 98134

with an electronic copy to suzanne.simmons@seattle.gov

6. Assumption of Property Risk. The placement and storage of Lessee's Business Personal Property in or about the Premises shall be the responsibility, and at the sole risk, of Lessee.

7. Adjustments of Claims: The Lessee shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Lessee under this Agreement.

8. Lessee's Responsibility: The procuring of the policies of insurance required by this Agreement shall not be construed to limit the Lessee's liability hereunder. Notwithstanding said insurance, the Lessee shall be obligated for the full and total amount of any damage, injury or loss caused by negligence of the Lessee, or any of its agents, officers and employees or through use or occupancy of the Premises.

EXHIBIT C - PUBLIC BENEFIT AND REPORTING REQUIREMENTS

Annual Reporting. Seward Park Clay Studio (SPCS) shall submit to Seattle Parks and Recreation (DPR) an annual public benefit report describing its programs, activities and educational services for its fiscal year (“Public Benefit Report”). DPR will provide a template for this report before the end of SPCS’s current fiscal year for the following year. The Public Benefit Report shall be submitted to DPR by the end of the 3rd month of the following year for each year during the Term of the Agreement.

SPCS shall also submit to DPR an Annual Statement of Income and Expenses for the prior fiscal year, no later than the end of the 4th month following the end of the fiscal year. SPCS shall submit any other reports as specified in this Agreement.

Public Benefits to be provided by SPCS shall include free (and pay-what-you-can) tickets, performances; scholarships; youth programs; community events; volunteer hours, and community outreach to, and programming for, underserved communities. DPR-approved capital improvements completed by SPCS beyond the required minor maintenance and repairs within the facility shall be reported as public benefit.

1) Public Access:

SPCS shall provide the public access to the Clay Studio through programs, classes/workshops, youth programs, exhibitions/shows, rentals, events and other activities. SPCS shall provide free admittance to the general public for a minimum of 6 exhibitions, shows, lectures, classes and/or workshops per year, for a minimum value of \$10,000 annually.

2) Youth Programs:

Provide K-6 students access to clay arts through classes, workshops, shows, and camps and outreach opportunities. SPCS will provide a minimum of 10 classes with scholarships to any who requests it. In addition, SPCS will partner with the Seattle Youth Violence Prevention Initiative (SYVPI) to provide opportunities to participants in SYVPI to take part in SPCS programs and activities.

3) Scholarships:

Provide a minimum of \$5,000 in assistance in the form of scholarships for low-income youth and/or adults in the City. Scholarships will enable individuals from underserved communities who otherwise could not afford to participate in classes, workshops and camps.

4) Community Outreach:

SPCS will continue to expand its service area and exhibit venues through outreach to underserved schools and communities. SPCS will serve at least 100 students annually through programs or activities at area high schools and middle schools, including: Rainier Beach, Franklin, Cleveland, Aki Kurose, Mercer, South Shore and Orca.

5) Capital Improvements:

The value of capital improvements beyond the required maintenance and repair completed by SPCS will vary annually. Capital improvements must be reviewed by SPCS and mutually agreed to in writing by DPR and SPCS prior to any work. SPCS and DPR will work cooperatively on capital improvements.

6) Community Events:

SPCS's participation in, or production of, free community events shall be considered a Public Benefit. SPCS shall participate in or produce a minimum of one community event that is free to the general public annually.

7) Volunteer Opportunities:

SPCS shall provide volunteer opportunities for students and the general public. Volunteer hours shall be reported as Public Benefit at the most current rate for volunteers as listed under the National Value of Volunteer Time on the Independent Sector website: <https://www.independentsector.org/resource/the-value-of-volunteer-time/>. For 2016, the most current rate available at this time, the Estimated Value of Volunteer time is \$24.14. SPCS shall provide a minimum of 207 volunteer hours per year, for a minimum value of \$4,000 per year.