

Lease Agreement  
By and between  
The City of Somerville Acting through  
The Purchasing Department  
And

MUDFLAT POTTERY SCHOOL, INC.

CONTRACT #

CONTRACT VALUE: \$15,000.00

PO#

PO Amount: \$

Contract period: 9/01/2011 to 6/30/2012

(This lease is below the statutory threshold set forth in G.L. c. 30B, s. 16 and is not subject to a public procurement process under G.L. c. 30B, s. 16.)

CONTRACT FOR: LEASE 79-83 BROADWAY, SOMERVILLE FOR  
EAST SOMERVILLE POLICE SUB-STATION

VENDOR: Mudflat Pottery School, Inc.  
149 Broadway  
Somerville, MA 02143  
617-628-0589

**ACCORDING TO THE SPECIFICATIONS CONTAINED HEREIN.**

## LEASE AGREEMENT

This Lease Agreement ("Lease"), dated the 1st day of September, 2011, is by and between Mudflat Pottery School, Inc., a nonprofit corporation duly organized and existing under c. 180 of the General Laws of the Commonwealth of Massachusetts, with a usual address of 149 Broadway, Somerville, MA 02143 ("Landlord") and the City of Somerville, a body corporate and politic and a political subdivision of the Commonwealth of Massachusetts, acting through its Mayor, with a usual address of City Hall, 93 Highland Avenue, Somerville, MA 02143, ("Tenant"). This lease is below the statutory threshold set forth in G.L. c. 30B, s. 16 and is not subject to a public procurement process under G.L. c. 30B, §16.

### SECTION ONE: DESCRIPTION OF LEASED PREMISES

The Landlord hereby leases to Tenant and the Tenant hereby leases from the Landlord approximately 760 square feet of office space, consisting of five (5) rooms plus two bathrooms and approximately 300 square feet of basement storage space, at the building located at 79-83 Broadway, Somerville, MA (the "Leased Premises").

### SECTION TWO: TERM

The term ("Term") of the Lease shall commence on September 1, 2011 ("Commencement Date") and shall continue for a period of twelve (10) months, expiring on June 30, 2012. Upon the expiration of the Term, or earlier termination of this Lease, the Tenant shall peacefully surrender possession of the Leased Premises, including all improvements made by the Tenant.

### SECTION THREE: RENT

The rent for the Term shall be Fifteen Thousand and no/100 Dollars (\$15,000.00). Rent shall be due and payable in equal monthly installments of \$1,500.00 per month on the first day of each month in advance. In addition to the rent set forth above Tenant shall be responsible for all utility charges to the Leased Premises including, but not limited to, electricity, gas, water and sewer. Real estate taxes shall be the responsibility of the Landlord.

### SECTION FOUR: USE

The Tenant may use the Leased Premises for any use permitted under the Somerville Zoning Ordinance. The Tenant intends to use the Leased Premises as a police substation serving the Lower Broadway neighborhood, in which case, the Tenant covenants that there shall be no holding cells for prisoners at the police substation. The Tenant shall be solely responsible for obtaining any necessary permits and approvals for its use of the Leased Premises and shall be solely responsible for any and all expense related to making the Leased Premises suitable for its intended use.

### SECTION FIVE: ASSIGNMENT AND SUBLETTING

The Tenant shall not assign this Lease or sublet the Leased Premises without the prior written consent of the Landlord, which consent shall not be unreasonably withheld or delayed.

## SECTION SIX: ALTERATIONS AND IMPROVEMENTS

The Tenant may make nonstructural alterations to the interior of Leased Premises without the consent of the Landlord. The Tenant may make structural or exterior alterations to the Leased Premises provided the Tenant has obtained the prior written consent of the Landlord, which consent shall not be unreasonably withheld or delayed.

## SECTION SIX: MAINTENANCE AND REPAIR

The Tenant shall, at its own expense, keep the Leased Premises and the sidewalk adjoining the Leased Premises in good and clean order and condition (including snow removal), ordinary wear and tear and casualty excepted. The Tenant shall be responsible for all ordinary maintenance and repairs at the Leased Premises.

## SECTION SEVEN: DAMAGE OR DESTRUCTION

If, during the Lease Term or any Renewal Term, the Leased Premises shall be destroyed or damaged to a material extent by fire, flood, or other casualty or cause not attributable to the intentional, willful, or negligent acts or omissions of the Tenant, the Tenant shall have the right to: (a) terminate this Lease as of the date of its election to do so, by written notice to Landlord given within ninety (90) days of the damage or destruction; or (b) continue this Lease and restore the interior of the Leased Premises. If the Tenant elects not to terminate, the Tenant's restoration of the interior of the Leased Premises shall commence as soon as reasonably possible and shall be conducted with all due diligence and in accordance with applicable federal, state, and local laws, ordinances, and regulations. Subject to the rights of the Landlord's mortgagee(s), any insurance proceeds payable with respect to damage or destruction of the building façade enclosing the Leased Premises, or structural components or mechanical or electrical systems other than those located wholly within and serving only the Leased Premises, shall be made available by the Landlord to finance the cost, or reimburse the Tenant for the cost, of restoration of such façade, components, and/or systems.

## SECTION EIGHT: INSURANCE

The Tenant is self-insured. The Landlord shall have no liability for personal injury or property damage suffered by the Tenant or the Tenant's agents, employees, invitees, or uninvited visitors, except such as may arise out of intentional, willful or negligent acts or omissions of Landlord or Landlord's agents or employees.

The Landlord shall maintain casualty insurance on the building of which the Leased Premises is a part. To the extent reasonably available without additional premium, all insurance policies covering the building shall expressly waive any right on the part of the insurer to be subrogated to any rights of Landlord against Tenant.

## SECTION TEN: DEFAULT

If the Tenant defaults in the observance or performance of any of Tenant's covenants, agreements, or obligations under this Lease, the Landlord shall give Tenant notice in writing of such default. The Landlord may terminate this Lease and, at the Landlord's option, pursue a

legal action against Tenant for damages if the Tenant fails to cure such default (a) in the case a default relating to the payment of rent, within ten (10) business days after the giving of notice; or (b) for any other default, within sixty (60) calendar days after the giving of notice, or longer time if a cure cannot reasonably be accomplished within sixty (60) calendar days provided the Tenant has commenced to cure within sixty (60) days and diligently proceeds to complete such cure within a reasonable time thereafter

The failure of either party to seek redress for a violation or breach of this Lease, or to insist on the strict performance of any covenant, agreement, term, provision, or condition of this Lease, shall not constitute a waiver and either party shall have all remedies provided in this Lease and by applicable law with respect to any subsequent act that would have originally constituted a violation or breach. To constitute a waiver, the waiver must be in writing signed by the waiving party.

#### SECTION ELEVEN: ESTOPPEL CERTIFICATES

At the request of the Landlord or the Landlord's mortgagee, the Tenant shall execute and deliver a statement certifying that this Lease has not been amended (or if it has been amended, in what respect it has been amended), that the Lease is in full force and effect, that the rent has been paid up to a certain date, and that, to the best of the Tenant's knowledge, the Landlord is not default in the performance of any covenant, agreement, or condition contained in the Lease (or if the Landlord is in default, specifying each default of which the signer may have knowledge), and further certifying as to such other matters relating to this Lease as may be reasonably requested by the Landlord or the Landlord's mortgagee, it being intended that any such statement delivered pursuant to this section may be relied on by the party to whom it is delivered including a prospective purchaser of the Premises, or a prospective mortgage holder, or any prospective assignee of any mortgage holder. The Landlord shall execute and deliver a similar statement if requested by the Tenant or the Tenant's auditors.

#### SECTION TWELVE: NOTICE

All notices, demands, requests or other communications which may be required or are required to be given or sent by either the Landlord or the Tenant to the other, shall be in writing and shall be deemed to have been properly given or sent when mailed, postage prepaid, by registered, certified or express mail, or by Federal Express, or similar delivery service with proof of delivery, with the postage prepaid, addressed to such other party at the following addresses:

*To the Landlord:*

Lynn Gervens, Executive Director  
Mudflat Pottery School, Inc.  
149 Broadway  
Somerville, MA 02145, with a copy to

Michael J. Murphy, Esq.  
Grassia, Murphy & Lupan, P.A.  
5 Commonwealth Road  
Natick, MA 01760;

*To the Tenant:*

Joseph A. Curtatone, Mayor  
City of Somerville  
City Hall, 93 Highland Avenue  
Somerville, MA 02143, and

Thomas Pasquarello, Chief of Police  
Public Safety Building  
220 Washington Street  
Somerville, MA 02143, with a copy to

Francis X. Wright, Jr., City Solicitor  
Law Department  
City Hall, 93 Highland Avenue  
Somerville, MA 02143

Either the Landlord or the Tenant may designate by notice in writing a new address to which any notice, demand, request, or communication may be so given, served, or sent.

The Landlord and the Tenant shall promptly furnish to the other party a copy of any notice it may receive from any third person that may affect the rights of any party under this Lease.

#### SECTION THIRTEEN: MISCELLANEOUS

##### A. Successors and Assigns.

The covenants, agreements, terms, provisions, and conditions of this Lease shall bind and inure to the benefit of the respective heirs, distributees, executors, administrators, successors, assigns, and legal representatives of the parties to this Lease with the same effect as if mentioned in each instance where a party to this Lease is named or referred to.

##### B. Attorneys' Fees

In the event that any legal action is filed in relation to this Lease, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees and expenses.

##### C. Entire Agreement/Modification

This Lease, with all Exhibits, contains the entire agreement between Landlord and Tenant. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding on either party except to the extent incorporated in this Lease. Any modification of this Lease or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

D. Headings/Pronouns

Section headings are for convenience only and shall not be used to explain, modify, simplify, limit, define, or aid in determining the meaning or content of this Lease. All pronouns and any variations of same shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or persons may require.

E. Severability

If any provision of this Lease or the application of such a provision to any person or circumstances shall be determined to be invalid or unenforceable, the remaining provisions of this Lease or the application of the provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected and shall be valid and enforceable to the fullest extent.

F. Governing Law

It is agreed that this Lease shall be governed by, construed, and enforced in accordance with the laws of Massachusetts, without reference to its conflicts of laws provisions.

G. Landlord's Renovation/Construction

Tenant acknowledges that Landlord intends to completely gut and renovate the building at 79-83 Broadway, Somerville, MA ("Broadway Theatre") (of which the Leased Premises are a part) for its use as a pottery school and artist studios. Tenant understands that Landlord's renovation of the Broadway Theatre may, on occasion, adversely impact Tenant's use and enjoyment of the Leased Premises during the construction process. Tenant agrees to work cooperatively with Landlord in providing access to the Lease Premises to perform required work (e.g. demolition of unused basement storage area, installation of sprinklers and ventilation systems, etc.) during the construction process. Tenant acknowledges and understands that Landlord's renovation of the Broadway Theatre will result in construction noise, vibration, dust, dirt, inconvenience and possible interruption of services to the Lease Premises.

H. Indemnification

Tenant acknowledges that Tenant is solely in control of and responsible for the conduct of Tenant's business on the Lease Premises, and that Tenant's agents, contractors, employees, servants, lessees, concessionaires, licensees, and/or invitees are on the Lease Premises at Tenant's sole risk. Tenant shall indemnify and hold harmless Landlord from and against any and all claims, actions, damages, liability and expense (including reasonable attorney fees) in connection with loss of life, personal injury or damage to property arising out of any occurrence in, upon or at the Leased Premises, or the occupancy or use by Tenant of the Leased Premises or any part thereof, or occasioned wholly or in part by a default under this Lease or any act or omission of Tenant, its agents, contractors, employees, servants, lessees, or concessionaires, licensees or invitees. In case Landlord be made a party to any litigation commenced by or

against Tenant, then Tenant shall protect and hold Landlord harmless there-from and shall defend Landlord in such proceedings with counsel reasonably acceptable to Landlord. Tenant shall also pay all costs, expenses and reasonable attorney's fees that may be incurred or paid by Landlord in enforcing a default for non-payment of rent, real estate taxes or other imposition by Tenant hereunder.

I. Other Provisions

Notwithstanding anything to the contrary in this Agreement, the Tenant may elect to terminate this Lease, without cause, at any time, upon giving sixty (60) days advance written notice of the effective termination date. No rent shall be due to the Landlord for any period of time after the effective termination date.

IN WITNESS WHEREOF, the parties have executed this Lease as a sealed instrument as of the day and year first above written.

TENANT: City of Somerville

Approved as to Form:

\_\_\_\_\_  
Francis X. Wright, Jr.  
City Solicitor

By: \_\_\_\_\_  
Joseph A. Curtatone, Mayor  
Duly Authorized

LANDLORD: Mudflat Pottery School, Inc.

By: \_\_\_\_\_  
Lynn Gervens, Executive Director  
Duly Authorized

**CITY OF SOMERVILLE**

I hereby certify that, of the total contract amount of \$ 15,000.00 the sum of \$ 15,000.00 is available at this time; and that the sum of \$ 15,000.00 is hereby encumbered against the appropriate account for the purpose of this contract; and that as additional funds become available, I will encumber additional monies up to the total contract amount.

\_\_\_\_\_  
Edward Bean, City Auditor

\_\_\_\_\_  
Thomas Pasquarello, Chief of Police  
Somerville Police Department

\_\_\_\_\_  
Angela M. Allen, Purchasing Director



APPENDIX B

DISCLOSURE STATEMENT  
Acquisition/Disposition of Real Property

The undersigned does hereby file the following statement with the Commonwealth of Massachusetts Division of Capital Asset Management (DCAM) for the purpose of disclosure pursuant to section 40J of Chapter 7 of the General Laws of Massachusetts:

REAL PROPERTY: 83 Broadway, Somerville MA 02145

SELLER ( ) LESSOR (X): Mudflat Pottery School Inc

BUYER ( ) LESSEE (X): City of Somerville

TERMS: Purchase Price:  
Closing Date:  
Other:

Listed below are the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in the Property. There is no person with a direct or indirect beneficial interest in the property who is either an official elected to public office in the City of Somerville or an employee of the City of Somerville.

Lynn Gervens of 39 Kelley St Cambridge  
Exec Dir of  
Mudflat of

Name: Lynn Gervens  
By: Lynn Gervens  
Title: Executive Director  
Mudflat