



OFFICE OF THE CITY ATTORNEY

FEB 19 2020

## STANDARD

## Contract Routing Cover Sheet

TO: \_\_\_\_\_

Please print and attach to your document

You can view the status of your contract using the [Contract Tracking Status Page](#).


Routing Number	20200219-6533		
Originating Dept	Parks & Recreation		
Contact Person	Alison Rhodes	Phone Number	3034137249
Project Manager / Contract Administrator	Alison Rhodes	E-mail	rhodesa@bouldercolorado.gov
Counter Parties	LandLoch, LLC		
Contract Title / Type	Reservoir Restaurant Lease		
Number			
Description	The document is a lease, allowing operations of hospitality services at the Boulder Reservoir Visitor Services Center. This agreement augments the customer experience at the Reservoir with high quality food and beverage services.		
Special Instructions	Please RUSH!		
Amount		Expense Type	INCOMING

• Dept. Head Signature 

**NOTE; Originating Department:** Identify with a check mark all areas document needs to be routed.

- Purchasing \_\_\_\_\_
- Budget \_\_\_\_\_
- Sales Tax \_\_\_\_\_
- CAO \_\_\_\_\_
- City Manager \_\_\_\_\_
- Central Records \_\_\_\_\_

Insurance certificate will be obtained by Ali Rhodes at the commencement of lease when construction is complete.



CITY OF BOULDER  
CITY ATTORNEY'S OFFICE  
CENTRAL RECORDS

2020 FEB 20 PM 1:43

## RESERVOIR RESTAURANT LEASE

THIS CONTRACT is made this 18 day of FEB <sup>2020</sup>~~201~~ by and between the City of Boulder, Colorado, a Colorado home rule city (the "City") and LandLoch Boulder, LLC, a Colorado limited liability company (the "Tenant") (collectively, the "Parties").

### RECITALS

- A. The City owns and operates the Boulder Reservoir (the "Reservoir") located at 5565 Reservoir Road in Boulder, Colorado. The Reservoir is a public facility, enjoyed by community members and visitors for its setting and recreational amenities that include a swim beach, boating and fishing.
- B. A restaurant and patio will be constructed in 2019 at the Reservoir (the "Restaurant") with an anticipated construction completion date of March 2020 and an anticipated first full season of operation in 2020.
- C. The City desires to increase the community benefit and augment the customer experience at the Reservoir by providing high quality food and beverage services at the restaurant, available to visitors, and such other ancillary use, operation and maintenance of the restaurant as described in this Contract. Tenant is willing and able to provide such services. The property and lease premises ("Premises") are depicted in Exhibit A and include the restaurant, kitchen, patio, and yard adjacent to the patio.
- D. Prior to commencement of services, Tenant shall purchase non-permanent fixtures and equipment necessary for the performance of services and as set forth in this Contract. The Tenant will also operate exterior space noted in Exhibit A which includes the Yard and the Patio. In addition, the city and the Tenant shall share operating responsibility and expenses for spaces as outlined in Exhibits B and C which include the restrooms, office spaces, and swim beach. As set forth in this Contract, City shall also be provided access for use of exterior space for a variety of uses, including but not limited to community gatherings, youth camps, special events, and other programming uses.
- E. Tenant shall pay City rent and community area maintenance ("CAM") fees as outlined in Exhibit C and retain all revenues for food and beverage sales at the Restaurant and catering through ancillary uses such as special events as set forth in this Contract.

### COVENANTS AND CONDITIONS

NOW, THEREFORE, in consideration of the promises and obligations set forth below, the City and Tenant agree as follows:

1. OBLIGATIONS DURING CONSTRUCTION & PRIOR TO RESTAURANT OPERATIONS



A. The Parties desire a restaurant and furniture selections that will meet their mutual business interests. Buildout and finish of restaurant area and kitchen are to be completed by the City, with design finishes to be mutually determined between the City and the tenant. The tenant is allotted \$30 per sq. ft. for tenant improvements to interior spaces marked in the premises as identified in the leasehold on Exhibit A (2,210 sq. ft) to be issued pursuant to agreed upon draw amounts, not to be unreasonably withheld. In addition to other obligations outlined herein, Tenant will be responsible for obtaining all applicable governmental approvals and permits necessary for the completion of tenant's improvements and the occupancy of the premises.

B. Construction completion shall mean at the time a certificate of occupancy is issued ("Construction Completion"). Unless government permits are not properly issued or modified from the original intent of the agreement, such as the redline of the outdoor space being denied or modified by the local liquor licensing authority, breach or termination by Tenant of this Contract prior to or at Construction Completion, shall result in Tenant being responsible for actual expenses the City incurred as a result of amending the design, scope and construction of the restaurant as requested by Tenant. This includes, but is not limited to, interior space adjustments, additional utility connections, and any infrastructure adjustments to the restaurant kitchen. Tenant agrees to reimburse the City for such documented expenses within 90 days of City invoicing. Furthermore, such breach or termination prior to or at construction completion shall void the entire Agreement including the lease.

C. Except as otherwise provided in Item 1(D) below, site furnishings and fixtures for the restaurant (indoor and outdoor) shall be selected, purchased and owned by the Tenant including those impermanent materials, appliances, furnishings, and infrastructure obtained, purchased, selected, installed, and utilized by Tenant for the performance of their services, which shall continue to be owned and maintained by Tenant ("Furnishings and Fixtures"). Tenant shall provide the City with a list of its Furnishings and Fixtures prior to the commencement of this lease. By way of example, Tenant-provided equipment and materials shall include: range, refrigerator, mobile food preparation and service equipment (i.e., toaster, coffee machine, etc.), shelving, ice machine, wine and alcohol storage, all utensils and serveware.

D. The City shall purchase, own and install more permanent kitchen infrastructure including grease trap, hood, sink, counters, and walk-in coolers and freezers. These items shall remain the property of the city.

E. Upon any termination or cancellation of this Contract, Tenant shall, at its own expense, remove their Furnishings and Fixtures located at the Premises. That notwithstanding, Tenant may offer these items to City for purchase at then-current market value which the City shall have no obligation to accept in whole or in part.

## 2. LEASE TERM, RENT AND COMMON AREA MAINTENANCE

A. The City agrees to lease the Premises to Tenant for use. Tenant's services in connection with food and beverage service needs at the Reservoir for a five-year term anticipated to begin in 2020 and end five years to the date thereafter. Commencement of such term shall begin from the date when a temporary certificate of occupancy is granted by the City for the Premises and all the city's construction-related work is completed (the "Possession Date"). Tenant covenants and agrees to provide said services, as set forth in this Contract during said period.

B. Renewal. The Parties may extend the Agreement for two subsequent five-year terms if the Tenant provides to City in writing its intent to extend the lease. "Renewal Commencement Term". Contract renewals shall be in writing and signed by both parties. Tenant shall provide City with written notice of its intent to renew no later than 180 days prior to the expiration of the most recent fully executed Contract. If tenant elects to extend the lease, rent increase shall not exceed 3% of the final price of the initial lease term.

C. The Rent Commencement Date triggers the Tenant's obligation to pay rents due under this lease and shall occur the earlier of either ninety (90) days following opening day or 150 days following the Possession Date. "Rent Commencement Date".

D. Rent & Common Area Maintenance (CAM): The base rent shall be calculated as follows: \$2,850/month for interior and exterior patio space as noted on Exhibit A. "Base Rent". At the time of this lease, the lease covers approximately 2,209 square feet of interior space, and 933 sq. ft. of patio/outdoor space.

Tenant shall also pay CAM charges as outlined below and in Exhibit C for the Premises including the Yard, Swim Beach and Patio, as defined in Section 5.A. The Yard and Swim Beach are licensed to Tenant by the City for Tenant's possession and control for purposes of the sale and service of alcohol, as depicted by the redline in Exhibit A. Tenant shall timely pay the City a monthly Base Rent of \$2,850 plus CAM fees on or before the 10<sup>th</sup> day of each month to begin at the Rent Commencement Date for the duration of the term.

Base Rent shall increase at the beginning of the thirteenth (13th) full calendar month from the Renewal Commencement Date by three percent (3%), which adjusted rent amount shall remain in effect for the next twelve (12) consecutive months and shall increase by three percent (3%) each twelve (12) months thereafter for the balance of the Term.

Late payments shall incur a late penalty fee of \$50 per day that it is late. Tenant may also be subject to termination of Agreement for non-payment or late payment as set forth in Section 9 of this Contract.

E. Common Area Maintenance (CAM) fees shall include charges for trash/recycle/compost, utilities (electric, and gas), grease trap cleaning, custodial services, and other direct costs incurred by the landlord to support tenant's operation. Calculations for CAM are outlined in Exhibit C and reflect the responsibilities for the Season and Off-season.



F. The equivalent of one (1) full month's rent is to be delivered to the city upon the Contract's execution as security deposit which shall be forfeited by Tenant upon Contract termination for any reason or upon any premises or facility damage not cured by Tenant as otherwise described in this Contract.

### 3. SCOPE OF SERVICES

A. The Restaurant and Events Program shall be operated year-round with anticipated minimal operating hours of 11:00 a.m. – 5:00 p.m. every day from Memorial Day Weekend through Labor Day Weekend (the "Season") of each year during the term of this Contract. The tenant expects to have the option to be open during expanded hours, beyond the minimal operating hours, as long as tenant complies with any city ordinances and use codes. These expanded hours would take place any day of the week both during the "Season" and the "Off Season" (Off-season is defined as those dates between Labor Day and Memorial Day). The Parties may agree to amend Season hours of operation in September 2020. Any change in hours of operation shall be in writing and subject to city approval. Tenant Rent and CAM charges will be abated by one month for any consecutive 4-week closure during the Off Season, provided that changes or closures are made in accordance with this lease.

B. To ensure that operations of the leasehold align with and promote community values, and to promote the success of the partnership, each entity shall abide by the Operating Guiding Principles as set forth in Exhibit B. Each entity will participate in the development and implementation of guiding policy and operational documents as outlined in Exhibit B to support collaborative management of this public space.

C. The Tenant may provide indoor amplified music. Outdoor amplified sound and/or live performances for the public's enjoyment at the patio or in connection with the ancillary use described herein may be provided subject to the city of Boulder's noise ordinance. Any deviation from the city's noise ordinance shall require written city permission. The duration, hours and level of allowed amplification in such instances shall consider the proximity of the premises to other properties, other scheduled Reservoir activities and permitted events and the rural nature of the setting. Tenant has the exclusive authority to book, manage and schedule artists for entertainment and shall be responsible for any violations or fines associated with tenant arranged or facilitated facility or premises amplified sound.

D. The Parties agree to work together in developing the Restaurant's branding concept and on-site signage to communicate the public/private partnership. The brand and name of the Restaurant shall thereafter be owned by the Tenant and utilized by Tenant solely in connection with the terms and conditions of this Contract. Signage and marketing of the Restaurant will indicate that it is operated by Tenant, reflects Tenant's branding and vision, and that the site is a City of Boulder public facility, operated in partnership with the City. Shared branding signage expenses will be split 50/50, single entity signage shall be approved by the partners and paid by the owning entity. Signage may include interior wall-mounted signage,

icons or way-finding on the face of the premises and at the entrance to the Reservoir in alignment with the city code and must be approved by the City in writing before installation. All signage is subject to review and approval by the City not to be unreasonably withheld.

E. Tenant shall be responsible for its employees, tenants and vendors performing services under the Contract.

F. Tenant's scheduled employees and vendors shall be allowed unpaid daily access and parking at the Boulder Reservoir during normal business hours each Season. These employees' and vendors' assigned parking locations in designated staff areas are identified in **Exhibit A** of this Contract. Such access and parking shall require a specific gate pass and may be utilized for pedestrians, cars, trucks and bicycles only (no watercraft of any type). Gate pass utilization by Tenant shall be monitored monthly. Tenant and landlord will work in good faith to resolve any conflicts that may develop due to restaurant employee parking or recreational use.

G. Revenue. Unless otherwise specified, Tenant shall retain all revenues from food and beverage sales at the Restaurant, as well as all revenues from their operation through ancillary uses such as special events.

H. Tenant shall obtain any and all permits related to the operation of a restaurant including and not limited to health inspection approvals and licenses for the provision of food and beverage services and, as Tenant might pursue, licensure allowing for the sale and consumption of alcoholic beverages.

I. Tenant shall provide and maintain adequate serveware and other equipment necessary to accommodate the food and beverage preparation, sale, and service.

J. Tenant shall staff and supervise personnel necessary and required for safe and professional operation of the Restaurant, including the kitchen and, as utilized, the exterior premises. This shall include, but not be limited to, training, retention, and supervision of TIPS-certified bartending personnel and necessary security in compliance with the liquor license.

K. Tenant shall develop, prepare, and serve high-quality, affordable menu items in the Restaurant complementary to the Boulder Reservoir's family-friendly environment.

L. Tenant shall maintain and operate the Restaurant industry standards to, including but not limited to the patio bar-area, if any, and the exterior premises as a clean, safe and aesthetically pleasing facility at all times.

M. Tenant shall pay for ancillary uses as further described in Section 5, Ancillary Uses and the Yard.

N. Maintenance. Tenant shall be responsible for annual kitchen hood cleaning, maintenance of the hood and required inspection(s). The City will be responsible for all other maintenance and repairs EXCEPT those noted as part of CAM and those caused by Tenant's negligent acts or omissions.

O. Tenant shall be responsible for any and all taxes or fees as a result of Tenant's business operation and the performance of services at the Restaurant.

P. Tenant shall participate in mutually agreed upon frequency and at least quarterly meetings between Tenant leadership and Boulder Reservoir site management, with such meetings to be requested by either party, to ensure the public's continued enjoyment of the Restaurant and the continued professional, safe, and mutually beneficial operation of the Boulder Reservoir. This shall include at least one meeting quarterly, when requested by either party, addressing operational coordination and expectations.

Q. To support the city's sustainability goals, tenant will support, where possible and feasible, on-site composting and recycling and promote non-single occupancy vehicle (SOV) travel, where possible by employees, business owners, guests or vendors.

#### 4. RESPONSIBILITIES OF THE CITY

A. The City shall fund, design, develop, permit and construct the Restaurant and patio.

B. The City shall maintain the Restaurant utilities accounts. Tenant shall pay \$1000/month for its share of utilities (gas, electric, and water) on the premises, as outlined in the CAM Schedule.

C. The City shall provide reasonable access to the Restaurant as is necessitated for Tenant's operation.

D. The City shall coordinate and cooperate with Tenant to ensure the safety, cleanliness and efficiency of the Restaurant's operation.

E. The City shall co-promote the Restaurant as a public amenity available for Boulder Reservoir visitor and reserved groups during the Term with collateral to be approved by communications team, ownership or management, to ensure a consistent branding message to customers.

F. The City will be responsible for maintenance and repairs EXCEPT concerning the kitchen hood, those noted as part of CAM and outlined in Exhibit C, and those caused by Tenant's negligent acts or omissions or those acts or omissions of Tenant's subleases.

#### 5. ANCILLARY USES AND EXTERIOR SPACE

A. To support Tenant's anticipated operations at the Restaurant and to encourage the financial viability of these endeavors, the lease includes tenant's operation of exterior space noted as "the Yard" in Exhibit A. The City hereby grants Tenant a license to possess and control The Yard and Swim Beach for purposes of the sale and service of alcohol, as



depicted by the redline in Exhibit A. Tenant shall fund the cost of the patio area enclosure, rental or purchase of outdoor furniture, and fencing or separation defining that area of the property.

B. The Parties intend mutual utilization of exterior space will substantially contribute to their respective success under this Contract and the Parties shall work together in good faith to ensure a pleasant visiting experience for guests, avoiding conflicts with the City's admission paying public's enjoyment of the Boulder Reservoir. The Parties shall strive for complementary and thoughtful scheduling and management of special events and scheduled bookings through regular communications between the Parties.

C. The Parties agree that Tenant may utilize the leasehold area and exterior space for private events, as reserved by guests and clients of Tenant, evenings after 6:00p.m. Memorial Day to Labor Day and anytime Labor Day to Memorial Day ("Private Party Bookings" or "booking"). Prior to 6:00p.m. during the Season, the space is to be available for general public usage. Notice of each such booking shall comply with all relevant local and state ordinances, and be immediately communicated to the Boulder Reservoir's Point of Contact and no less than seven (7) business days prior to a scheduled event and will include:

- Anticipated guest count maximum;
- Anticipated number of vehicles and whether special vehicle access shall be requested;
- Number and specific hours of event, including load in/load out;
- Anticipated use and duration of amplified sound;
- Anticipated service of alcoholic beverages, as applicable; and
- Subject to written city approval, any request for alternative hours or access associated with the event.

D. For each such booking, and in addition to all monthly rent and CAM fees described above, Tenant agrees to remit to the City reimbursement for expenses as outlined in Exhibit C incurred due to the ancillary and/or Off-Seasons operations.

E. Tenant may from time to time, in accordance with the lease terms and without inhibiting public access to the premises as outlined, rent space within the controlled border of the premises to outside caterers, food trucks, or other vendors, either to provide additional services to the public or to provide services for private events. The terms of the lease and the associated documents supersede any right to rent space to any third party. Tenant shall retain 100% of the net profit from any such sublease and agrees to be fully responsible for all acts or omissions of any sublessee.

F. The City shall not lease any portions of the leasehold to other entities during the term of this agreement. That notwithstanding, the parties agree that Tenant will promote, encourage and annually report on sublessees or vendor solicitations and nothing herein shall prevent or preclude the City from offering limited Special Events permits or licenses outside of the leasehold area on the broader Reservoir property as further provided in item 5(G) below provided that Tenant is promoted as a preferred caterer (but not exclusive) for all catering services for all associated City-permitted Events and also made aware of event scheduling.

G. If the City otherwise schedules use outside of the leasehold including, but not limited to, Special Event Blackout Dates, the City shall promptly notify Tenant in order to avoid scheduling conflicts. Such City activities may include, but shall not be limited to, daytime, weekday utilization of the area for coordination of programming and youth camp shade areas, smaller private parties secured directly through the City, special events such as IronMan, and community gatherings. In those instances, the City agrees to position Tenant as the preferred Restaurant caterer and sole alcohol licensure/bartending service available. These six dates will be set each year and communicated to the Tenant with consideration given to impacts on business.

H. The Parties agree that the Restaurant is a City amenity and that Tenant shall provide catering (food only) for up to six (6) City-presented events at the Restaurant without Facility Rental costs and otherwise *at cost each year* during the Term of this Contract. Such civic use may include, but shall not be limited to, neighbor or volunteer appreciation events, community open-house or engagement, board or commission retreats or City staff meetings. The City shall annually determine and identify the six (6) City-presented events and potential civic uses and dates will be cleared with Tenant to ensure there are no conflicts with other events. The Parties agree that such activities shall be limited during the Season, shall prefer non-weekend dates in the off-Season, and be coordinated with the tenant to limit business impacts.

#### 6. INSURANCE

Tenant agrees to procure and maintain in force during the term of this Contract, at its own cost, the following minimum coverages:

- A. Workers' Compensation and Employers' Liability
  - i. State of Colorado: Statutory
- B. General Liability
  - i. General Aggregate Limit: \$2,000,000
  - ii. Per Occurrence: \$1,000,000

Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001 and should include both ongoing and completed operations coverages up to the policy limits.

- C. Automobile Liability Limits<sup>1</sup>
  - i. Bodily Injury & Property Damage Combined Single Limit: \$1,000,000
- D. Liquor Liability Coverage \$2,000,000

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<sup>1</sup>Applicable only if Tenant, its agents, employees, or representatives will be using motor vehicles in Colorado while performing services.

Coverage provided should be at least as broad as found in ISO form CA0001 (BAP) including coverage for owned, non-owned and hired autos.

- E. Insurance shall:
  - i. Provide primary coverage;
  - ii. **Include the City of Boulder and its officials and employees as additional insureds** as their interest may appear (except for Worker's Compensation). Additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for auto liability;
  - iii. Include a waiver of subrogation for General Liability coverage;
  - iv. Issue from a company licensed to do business in Colorado having an AM Best rating of at least A-VI; and
  - v. Be procured and maintained in full force and effect for duration of work.

F. Certificates of Insurance evidencing the coverages described herein, shall be forwarded to Purchasing. **Certificate Holder shall be: City of Boulder, 1777 Broadway, Boulder, CO 80302.**

G. Within seven days after receiving insurer's notice of cancellation or reduction in coverage, Tenant, or its insurance broker, shall notify the City. In either such case, Tenant shall promptly obtain and submit proof of substitute insurance complying with the City's insurance requirements.

#### 7. INDEMNIFICATION/LIABILITY

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

The City agrees that Tenant shall not be liable for any delay or non-performance due to the failure of the source of supply from which Tenant obtains the materials to make delivery, or due to delays in transportation, labor strikes, floods, fires, acts of God, or to the acts or regulations of any governmental entity or any branch or agency thereof. Tenant however, shall not be excused from liability for delays or non-performance caused by events or conditions within its control, nor for delays or non-performance which it could have foreseen and avoided, prevented or significantly ameliorated by exercising reasonable prudence or diligence, nor for any delays or non-performance caused in whole or in part by Tenant itself. In the event of delay or non-performance by Tenant for any reasons set forth in this paragraph, or for any other reason, the City shall be free to obtain said services from other sources without incurring liability or damages to the Tenant.



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

8. INDEPENDENT CONTRACTOR

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

9. TERMINATION

A. In the event that fire, or flood, windstorm, tornado, earthquake, or other natural disaster damages or destroys the Restaurant to the extent that it cannot be repaired or replaced within 60 days, this Contract shall be deemed to be mutually terminated, with each of the Parties to bear its own losses due to such termination.

B. Upon failure of Tenant to comply with any of the provisions or conditions of this Contract, including, without limitation, the timely payment of all rent and fees due under this Contract, the provision of a valid certificate of insurance, or failure to perform satisfactorily its scope of services, this Contract may be terminated at the option of the City following 15 days' written notice, if Tenant has not cured the default during such period. The same 15 days' written notice and cure provision shall apply to any defaults of the City's obligations under this Contract.

10. GENERAL CONDITIONS

A. Assignment. This Agreement may not be assigned by Tenant without the prior written consent of the City, which it may withhold at its sole discretion. However, such consent shall not be unreasonably withheld.

B. Governing Law. This Contract shall be subject to the provisions of the Charter and Municipal Code Ordinance of the City of Boulder, and Colorado law.

C. No Third Party Beneficiary. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved to the City and Tenant. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the City and Tenant that any such party or entity, other than the City or

Tenant, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

D. Severability. To the extent that this Contract may be executed and performance of the Parties' obligations may be accomplished within the intent of this Contract, the terms of this Contract are severable, and should any term or provision of this Contract be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other contract or provision.

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

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

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

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

- a) Notify the subtenant and the contracting state agency or political subdivision within three days that Tenant has actual knowledge that the subtenant is employing or contracting with an illegal alien; and
- b) Terminate the subcontract with the subtenant if within three days of receiving the notice required pursuant to 8-17.5-102(2)(b)(III)(A) the subtenant does not stop employing or contracting with the illegal alien; except that Tenant shall not terminate the contract with the subtenant if during such three days the subtenant provides information to establish that the subtenant has not knowingly employed or contracted with an illegal alien.

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

H. Appropriations. Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution, Article X, Section 20. Notwithstanding any other provision of this Contract, the City's obligations under this Contract are subject to annual appropriation by the City Council of the City. Any failure of a City Council annually to appropriate adequate monies to finance the City's obligations under this Contract shall terminate this Contract at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to Tenant of any failure to appropriate such adequate monies.

I. Authority. Tenant warrants that the individual executing this Contract is properly authorized to bind Tenant to this Contract.

J. Compliance with Laws. At all times during the performance of this Contract, Tenant shall strictly adhere to all applicable federal, state, and city laws. The term "laws," as used in this Contract, includes, without limitation, all federal, state, county, and city statutes, ordinances, codes, charters, laws, rules and regulations.

K. Notice. Whenever notice is required by this Contract, it shall be in writing, by email, hand-delivery, or certified mail, return receipt requested, and addressed to the following:

City of Boulder:  
City Manager  
1777 Broadway  
Boulder, Colorado 80306

With a copy to:

City of Boulder  
Department of Parks & Recreation  
Project Manager  
3198 Broadway Street  
Boulder, Colorado 80304

LandLoch, LLC  
2075 Oak Ave  
Boulder, CO 80304

Notice given by hand-delivery shall be effective immediately, and notice by mail shall be effective three days after it is deposited in the United States mail depository correctly addressed with sufficient postage for delivery.



- Exhibit A     Map of Boulder Reservoir property and lease premises**
- Exhibit B     Operating Agreements**
- Exhibit C     Maintenance Responsibilities and CAM calculations**

*(signature page follows)*

This Agreement shall be effective as of the date written above on the first page.

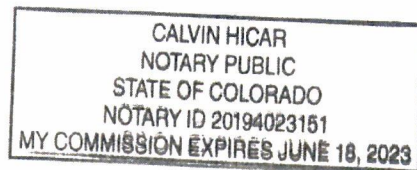
TENANT

By: 

Title: JOSH DINAR, MANAGING MEMBER

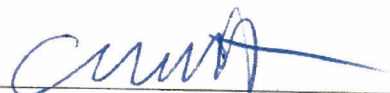
STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF BOULDER    )

Acknowledged before me, a notary public, this 18<sup>th</sup> day of FEB., 2020,  
by Joshua Dinar (Tenant name) as  
Managing Member (Tenant title).



Witness my hand and official seal.  
My commission expires:

JUNE 18<sup>th</sup>, 2023



Notary Public

(SEAL)

CITY OF BOULDER

Tony Arce  
Deputy City Manager

ATTEST:

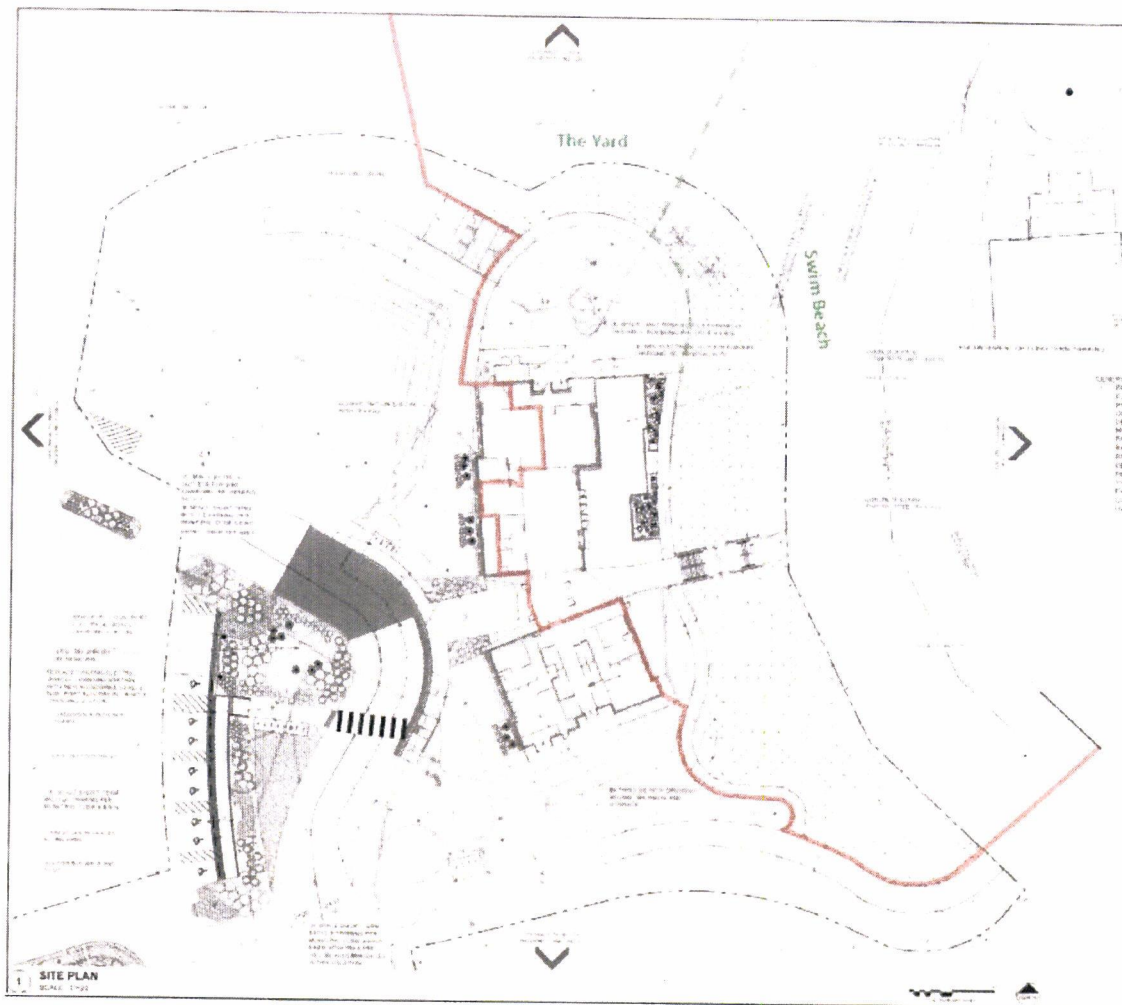
Rebecca Slamp  
Acting Deputy City Clerk

APPROVED AS TO FORM:

[Signature]  
City Attorney's Office



**EXHIBIT A**  
**Map of Boulder Reservoir property and lease premises**



The leasehold includes the restaurant, kitchen and patio adjacent to the building. The redlines indicate the maximum extent of the tenant's liquor license "redline", which may be adjusted pending input.

**EXHIBIT B**  
**Boulder Reservoir and LandLoch, LLC**  
**Operating Guiding Principles**

The intent of this document is to outline partnership agreements that do not fit within the lease, and as an exhibit, to capture the spirit of the agreement. It may be updated with both partners' agreement and approval as operations commence and lessons are learned.

**Purpose of the Guiding Principles**

These guiding principles represent a shared statement about the nature of the Boulder Reservoir and the manner in which its partners (the City of Boulder and LandLoch, LLC) intend to collaborate in its management.

**1 A Public Place**

Boulder Reservoir is a shared community resource and a public place. Its first and foremost purpose is a valuable drinking water supply for the City of Boulder. The recreational activities at the Reservoir are provided in a manner that is compatible with the protection and management of the water supply and have grown to be deeply appreciated by community members. It is essential that it remain a place that is accessible, safe and welcoming to the general public.

**2 Boulder Parks and Recreation Mission**

The mission of Boulder Parks and Recreation is to promote the health and well-being of the entire Boulder community by collaboratively providing high-quality parks, facilities and programs. Fidelity to this mission is paramount to sustaining the spirit of the Boulder Reservoir and fulfilling the goals of the Parks and Recreation Master Plan.

**3 A Balanced Approach**

Boulder Reservoir encompasses multiple operational and contractual uses and missions; the needs and interests of many must be balanced in a manner that protects the site and spirit of Boulder Reservoir, in keeping with principles 1 and 2. Management decisions about surrounding uses should be made with sensitivity to potential impacts on Boulder Reservoir. At the same time, Boulder Reservoir should be managed and preserved in a manner consistent with the community's sustainability goals and with sensitivity to impacts on surrounding residential neighborhoods.

#### **4 Collaborative Place Management**

To achieve the balanced approach described in principle 3, the Boulder Reservoir (including the Restaurant leasehold) must be collaboratively managed. In particular, the following components of collaborative place management must be clearly defined and agreed to by the city and LandLoch, LLC with the city retaining final approval authority:

**4a Roles and Responsibilities.** The city and the Reservoir Restaurant have the joint responsibility of supporting and enhancing the spirit and unique character of Boulder Reservoir through collaborative place management as well as the responsibility of managing specific public and private assets:

- LandLoch, LLC has the role of enhancing the visitors' experience at the Boulder Reservoir through delivery of its restaurant and events program. The Dining Out Group also has the responsibility, under its lease with the city, of managing certain public assets in a manner consistent with its Boulder Parks and Recreation mission and these guiding principles.
- The City of Boulder has multiple roles, including:
  - 1) Owner of the underlying land throughout Boulder Reservoir, the Visitor Services Center, restaurant, kitchen, patio, and yard adjacent to the patio in the leasehold, serving in this role as landlord. Importantly, honoring the Reservoir's role as a water source, the city is responsible for protecting water quality.
  - 2) Manager of the public infrastructure throughout Boulder Reservoir and of the public assets and lands outside the leasehold, including all the surrounding buildings and reservoir amenities; and
  - 3) Regulator in terms of city laws. The city has the responsibility of representing the interests and priorities of the community at-large; maintaining safe and efficient access to and within the site; and coordinating policy and action in a manner consistent with these guiding principles.

**4b Thresholds for Collaborative Processes.** Effective collaboration among the core entities responsible for the Boulder Reservoir management is critical. In general, the collaborative processes between LandLoch, LLC, the city and the public should proportionately increase as the scope of the proposed change increases.

- **Threshold 1: Minor Modifications and Operational Changes.** These encompass site or facility changes that do not involve significant changes to the site or public building exteriors; are led and financed primarily by a single party; and are consistent with these guiding principles. Coordination and collaboration between LandLoch, LLC and the city is essential.
- **Threshold 2: Significant Modifications and Operational Changes Led by a Single Party.** These are changes to the site or facilities that significantly alter a city-owned building's exterior, involve new construction or demolition, significantly alter historic site patterns or designs, and/or represent a significant change in use. This level of change may be proposed by a single party but will require a higher degree of coordination and collaboration early in the process to address the concerns or needs of other parties and ensure consistency with these guiding principles. The resulting process may or may not



lead to shared financial responsibility, but should ensure transparency, opportunities for public input and clarity and timeliness of decision making for the concerned party(ies). Examples of this type of change include the potential development of a boathouse or other South Shore improvements.

- **Threshold 3: Significant Modifications and Operational Changes.** These are changes similar in scope or impact to those in Threshold 2, but which would clearly benefit from joint interest in their planning and implementation. Due to the shared interest, these may require an even higher degree of collaboration early and throughout the process. An example of this type of change includes but is not limited to the following: Significant changes to operational hours or schedules, significant changes to use and/or allowed uses of site.

**5 Guiding Policy Documents.** To support a collaborative approach to management of the Visitor Services Center area key operational policy documents should be jointly developed and adopted by the core parties. These include but are not limited to: common area Standard of Practice Procedures for the Boulder Reservoir; Policies, Procedures, Rules, Emergency Action Plans (EAPs), and the Protection of Reservoir water pertaining to Aquatic Nuisance Species Protocol.

**6 Public Information and Input.** Because the management of the Visitor Services Center is a shared responsibility across the two parties, it could be difficult for the public to find complete and accurate information regarding planning and management-related issues for the area. A shared approach to providing public information and opportunities for public input shall be developed and implemented to support these principles' goals for collaborative stewardship in the public interest.

**7 Event and Operational Coordination.** To promote an effective partnership, the parties will each designate a Point of Contact (POC) for this lease. POCs will mutually agree upon meeting frequency based on seasonal or operational needs. POCs will develop a collaborative approach to effectively manage event schedules. Both parties will develop a master event schedule of events conducted outside of Boulder Reservoir operating hours, which include but are not limited to: notice to POC, coordination of gate access of events, communication plan to include emergency response, schedule changes, rental and event updates, and on-site chain of command for immediate needs and expense reimbursement of levels of service as outlined in the CAM Exhibit.

**8 Reservoir Access.** Boulder Reservoir POC will work with LandLoch POC to develop procedures for employee and vendor gate access. Boulder Reservoir and LandLoch, LLC mutually agree to define staff parking. Tenant agrees to related cost responsibilities as referred to in Exhibit C.

**9 Alcohol and Safety.** To promote safe consumption of alcohol, the tenant's redline includes the restaurant, patio, northern yard and Swim Beach. Tenant will provide appropriate controls to beach access areas that facilitate compliance with safe liquor practices and public access. EAP

and Emergency code training for Tenant staff will be coordinated with Reservoir staff. SOP will be created for addressing any alcohol related issues.

### **EXHIBIT C**

#### Common Area Maintenance and other Expenses to be paid by tenant Maintenance Responsibilities

	Methodology	The Season	Off Season
<b>Utilities</b>			
Natural Gas and Electric	Fixed Bill	\$ 1,000	\$ 1,000
<b>Contracted Services</b>			
Waste Services (trash/recycling/compost)	Fixed Bill	\$ 200	\$ 200
	Plus Direct Fee for Additional Services	As accrued	As accrued
Janitorial	Fixed Bill	\$ 800	\$ 800
Communications/Network	N/A		
<b>TOTAL Monthly CAM</b>		\$ 2,000	\$ 2,000

#### **Events outside of operating hours**

Gate Staff	100%	100%
Supplemental Custodial	100%	100%

#### **Beach Maintenance Beyond Existing Service Levels**

Existing Level by City:	100%	100%
Sand Groomed Once/Day during Season		
Additional Sand added each Spring		

**EXHIBIT C: Boulder Reservoir Maintenance Responsibilities**  
DRAFT 11/19

**Responsible Party**

Category	Cleaning		Maintenance		Repair		Replacement	
	BPR	LandLoch	BPR	LandLoch	BPR	LandLoch	BPR	LandLoch
<b>Site Exterior</b>								
Landscaping								
Paving - terrace, walks, ramp lighting								
Irrigation Systems & related pressure devices								
Sand								
Retaining Walls								
Site fences, handrails, guardrails								
Redline Liquor Permit Fencing								
Side steps and ramps to public right of way								
Site Signage	50%	50%	50%	50%	50%	50%	50%	50%
Trash enclosure, gates & parking space								
Exterior Lighting (lightbulbs)								
Trash receptacles								
<b>Interior Leasehold</b>								
Exposed foundation walls								
Windows exterior								
Exterior of outer walls								
Interior of outer walls								
Interior walls								
Ceilings								
Flooring								
Roof								
Doors								
Door hardware					MM	OM	MM	OM
Door lock cylinders and keying								
Restroom plumbing fixtures								
Restroom partitions								
Restroom accessories, i.e. mirrors, dispensers								
Restroom built-in receptacles								
Kitchen equipment								
Graffiti on exterior								
Building super structure								
<b>Interior Furnishings, Fixtures and Equipment</b>								
Artwork and furniture owned by the tenant								
Artwork and furniture owned by the city								
Glassware, tableware, table cloths, etc.								
Kitchen ware								
Loose trash receptacles								
Café and Patio Furniture								
<b>Building Plumbing System</b>								
Drain, waste, vent system					MM	OM		
Grease trap					MM	OM		
Storm drainage system								
Supply water piping and valving					MM	OM		
Hot water heater								
Water meter								
Kitchen floor sinks							MM	OM
Kitchen hand sinks							MM	OM
Food preparation or food cleaning sinks								
Dish washing equipment and sinks								
Hose bibs								
Rough-in of connection of kitchen equipment								
Connection of kitchen equipment								
Backflow prevention devices								
Pressure reducing devices								
<b>Fire Protection</b>								
Valving, piping, heads								
Hood fire protection system								
Backflow prevention devices								
Fire extinguishers								
Smoke, fire alarms devices and wiring								
<b>Heating, Ventilation and Air Conditioning (HVAC)</b>								
Primary HVAC equipment								
HVAC control equipment								
HVAC distribution and diffusing systems								
Diffusers								
HVAC fluids, filters, etc.								
Kitchen exhaust hood								
Restroom exhaust								
<b>Electrical Systems</b>								
Panels and disconnects					MM	OM		
Wiring					MM	OM		
Switching and convenience outlets					MM	OM		
Connection of kitchen equipment to disconnects								
Kitchen equipment, non-conduit wiring								
Emergency lighting								



Lighting:						
- ballasts						
- lamps						
- lens and trim						
- fixtures						
Exterior lighting						
Telephone pre-wire						
Telephone equipment						
Data communications within premises	50%	50%	50%	50%	50%	50%
Surveillance systems (internal)						
Fire & security alarm systems, telephone dialer						