

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	December 21, 2020
Action Required:	Approval of Resolution
Presenter:	Chris Engel, Director of Economic Development
Staff Contacts:	Chris Engel, Director of Economic Development Lisa Robertson, Deputy City Attorney
Title:	Standard Form Lease Agreement for Commercial Space

Background:

The City of Charlottesville has a number of commercial spaces that it routinely leases to private entities. A number of these are in the Market Street Parking Garage on the mall and Fifth Street sides. For many years these spaces were managed by the same entity that managed the parking facility on behalf of the city. With the transition to a new parking operator in 2018, this role was brought in-house and became the responsibility of the parking manager in the Office Economic Development. To facilitate timely lease renewals and new tenants an update to the process is needed.

Discussion:

The City Attorney's office has drafted a proposed standard form lease and the attached resolution to facilitate its efficient use. The form requires a public hearing and approval by council before it can be used.

In addition, the Council indicated an interest in providing temporary office space to the Charlottesville Redevelopment and Housing Authority during their upcoming redevelopment of the South First Street property. A suitable space at the Market Street Parking Garage has been identified for this purpose and a lease using the standard form lease is being drafted to formalize this agreement.

Alignment with Council Vision Areas and Strategic Plan:

This action aligns with the City Council's Strategic Plan Goal Four: A Strong Diversified Economy.

Community Engagement:

VA Code Sec. 15.2-1800(B) requires that any time the City leases public property to a private party, the City must hold a public hearing prior to entering into the lease.

Budgetary Impact:

There is generally no impact to the City's General Fund as revenues collected help defer operating and maintenance costs. All revenues collected through lease payments at the Market Street Parking Garage accrue to the Parking Enterprise Fund to assist with current and future maintenance needs.

Recommendation:

Staff recommends approval of the Resolution.

Attachments:

Proposed Resolution
Standard Form Lease Agreement

RESOLUTION
Approving Standard Form Lease Agreement

BE IT RESOLVED by the Charlottesville City Council **THAT**:

1. The City's Director of Economic Development, who is managed and supervised by the Office of the City Manager, is hereby authorized by this Council to act as the agent of the City of Charlottesville, for purposes of negotiating and entering into any lease agreement under which the City of Charlottesville (as "lessor") may lease commercial space within a City-owned building or structure to a tenant (as "Tenant").
2. The authorization granted in the preceding paragraph shall be exercised as follows:
 - a. The lease must contain covenants, terms and conditions substantially conforming to those set forth following below within this Resolution ("Standard Form Lease Agreement for Commercial Space within a City-Owned Building or Structure), provided that:
 - i. Annual Rent shall be negotiated with a specific Tenant and shall be established upon financial or other terms favorable to the City, taking into account economic and any other public benefits to be derived from the Tenant's use and occupancy of the demised premises;
 - ii. The Security Deposit will be an amount no less than 1/12 (one-twelfth) of the Annual Rent;
 - iii. Retrofits subsidized by the City may be included within the Lease, if the subsidy is in the form of: increased Rent for a specified period of time; reduction or forgiveness of Rent for a specified period of time; or in-kind contributions of the City (i.e., work performed by City forces);
 - iv. The Lease Term, inclusive of all possible Renewal Terms, shall not exceed five (5) years;
 - v. Insurance provisions may be modified at the recommendation of the City's Risk Manager;
 - vi. Indemnification provisions may be modified with the concurrence of the Office of the City Attorney; however, under no circumstances shall any such modification impose any financial liability or obligation upon the City which could be construed as a waiver of any sovereign or governmental immunity, or which would require the City to waive any substantive legal rights or claims it might have with respect to the negligence of the Tenant or any other person; and
 - vii. Other covenants, terms and conditions may be modified, subject to concurrence of the Office of the City Attorney that adequate consideration for such modification will be received by the City, and the lease document, as modified, will result in public benefits at least as favorable as those set forth within the standard Lease form approved by this Resolution.
 - b. The City's Director of Economic Development is hereby authorized to sign, as agent for the City of Charlottesville, any lease agreement which satisfies the criteria set forth within Paragraphs 2.a.i. through 2.a.vii., above.
3. Nothing in this Resolution shall preclude the City from entering into a Lease of commercial space for a term in excess of five (5) years; however, any such Lease shall first be presented to City Council for review and approval.
4. City Council conducted a public hearing on December 21, 2020 with respect to the covenants, terms and conditions set forth within the Standard Form Lease Agreement which follows below, and hereby approves the use of the form, subject to modifications authorized within this Resolution, without the requirement for any additional public hearing(s) for each individual lease of space:

**STANDARD FORM LEASE AGREEMENT
FOR COMMERCIAL SPACE
WITHIN A CITY-OWNED BUILDING OR STRUCTURE**

THIS LEASE is made this _____ day of _____, 20____, by and between THE CITY OF CHARLOTTESVILLE, VIRGINIA (herein, "Landlord") and _____ (herein "Tenant").

For in consideration of the mutual covenants and premises herein set forth, the parties hereto agree as follows:

Section 1. Leased Premises. Landlord hereby leases and demises to Tenant, and Tenant hereby leases and demises from Landlord, certain premises within the building or structure located _____ ("Building"), such premises consisting of _____ square feet of net usable ground floor space and _____ square feet of storage, as designated on the floor plan attached and incorporated herein as **Exhibit A** ("Leased Premises"). The Leased Premises are demised to the Tenant together with a nonexclusive right to the use of all hallways, stairs, sidewalks and other areas designated by the Landlord for common use of tenants within the Building ("Common Areas").

Section 2. Term of Lease. This Lease shall be for a term of _____ years ("Initial Lease Term"), commencing _____ ("Commencement Date") and expiring at midnight on _____ ("Expiration Date"), unless sooner terminated as provided herein. ("Initial Lease Term")

Section 3. Option to Renew. Provided that Tenant is not in default in the performance of this Lease, Tenant shall have the option to renew the Lease _____ ("Renewal Term"). Tenant's Renewal Term option must be exercised by giving written notice given to the Landlord at least _____ days prior to the expiration of the Initial Lease Term or preceding Renewal Term, as applicable. Any Renewal Term shall commence on the date following the date of expiration of the Initial Lease term, or the preceding Renewal Term, as applicable. All of the terms and conditions of this Lease shall apply throughout any Renewal Term.

Section 4. Rent. Tenant shall pay to the Landlord the annual rental of _____ Dollars (\$____) ("Annual Rent"), payable in equal monthly installments of _____ each, payable in advance on the fifth (5th) day of each calendar month ("Due Date"). Each Rent installment shall be mailed or delivered to the Landlord, at the address provided in Section 22 (Notices), below, so that they will be received by Landlord on or before the Due Date.

Section 5. Rent Increase. The Annual Rent shall increase each year, by an amount equal to two percent (2%) of the Rent payable during the preceding Lease Year.

Section 6. Security Deposit. Tenant shall pay to Landlord on the signing of this Lease Agreement the sum of \$ _____ (_____ Dollars) as security (“Security Deposit”) for the performance of Tenant’s obligations under this Lease, including, without limitation, the surrender of possession of the Leased Premises to the Landlord as herein provided. If Landlord applies the Security Deposit, or any portion thereof, to cure any Default of Tenant, then Tenant shall on demand pay to the Landlord an additional Security Deposit, so that Landlord shall have the full amount of the Security Deposit specified in this Section on hand at all times.

Section 7. Use of Premises. Tenant represents and warrants that it will use and occupy the Leased Premises for the following commercial purpose(s): _____ . Tenant shall not use the Leased Premises for any other purpose(s), unless with the advance written permission of the Landlord.

8. Care and Maintenance of Premises.

(A) Tenant acknowledges that it has had an opportunity to inspect the Leased Premises, and that the Leased Premises are in good order and repair, unless otherwise indicated within a written Inspection Report attached to this Lease Agreement and signed by both Landlord and Tenant. Tenant accepts the Leased Premises “as-is”. Tenant acknowledges that, based on its own inspection of the Leased Premises, the Leased Premises are suitable for its intended purposes. Landlord makes no warranties or representations as to the suitability of the Leased Premises for Tenant’s intended purposes.

(B) Landlord shall, at its expense, provide janitorial services for the entry to the Building, stairways, corridors and other common areas within the Building, and Landlord shall be responsible for removal of ice and snow from sidewalks and driveways. Landlord shall also, at its expense, maintain and keep in good repair:

- (i). the roof of the Building, exterior walls of the Building, structural foundations and other structural components of the Building,
- (ii). the plumbing and permanent electrical wiring that serve the Leased Premises,
- (iii). common heating, cooling and air handling equipment within the Building, and the ductwork that runs from such common equipment to the Leased Premises; provided, however, that Tenant shall be responsible for the cost and expense of any such maintenance, repair or replacement that is required as a result of any negligence or willful act of Tenant, its principals, employees, agents or invitees. Landlord shall not be responsible for maintenance, repair or replacement of any heating, cooling or air conditioning equipment or systems installed by Tenant within the Leased Premises for its own purposes, and all such installations shall be improvements for which Tenant shall be solely responsible.
- (iv). Landlord shall have a right of access to the Leased Premises, upon reasonable notice to the Tenant, at times necessary for performance of

work for which Landlord is responsible pursuant to the provisions of this section.

(C) Tenant shall, at its expense, provide janitorial services within the Leased Premises, and shall at all times keep and maintain the Leased Premises in a clean, sanitary and orderly condition. In addition, Tenant shall be solely responsible for all costs and expense required to keep and maintain the Leased Premises in substantially the same condition and repair in which the Leased Premises were delivered to the Tenant on the Commencement Date, reasonable and ordinary wear and tear excepted. Tenant shall also, at its expense:

- (i). maintain, repair and replace the furnishings, fixtures and equipment that are delivered with possession of the Leased Premises, including, without limitation: sinks, toilets, lighting fixtures, appliances, built-in cabinetry or furnishings, etc. (“Standard FF&E”);
- (ii). maintain, repair and replace any broken plate glass;
- (iii). keep and maintain the Leased Premises, and any alterations or improvements made by Tenant therein, in compliance with the requirements of all statutes, ordinances, regulations, covenants, conditions or requirements of all municipal, state and federal authorities, whether now in force or which may hereafter be in force, pertaining to the Leased Premises, occasioned by or affecting Tenant’s use thereof;
- (iv). maintain the condition of the Leased Premises, and its use of the Leased Premises and common areas therein, in accordance with rules which may be established from time to time by Landlord and communicated by Landlord or its agent to the Tenant.
- (v). keep and maintain the Leased Premises free of all nuisances, including, without limitation: vermin, insects, hazardous materials and hazardous substances.

Section 8. Alterations. Tenant may, with advance written consent of the Landlord, make alterations or improvements to the Leased Premises. At the Landlord’s sole option, alterations or improvements shall become the sole property of the Landlord upon the expiration or earlier termination of this Lease Agreement; provided, however, that Landlord, at its sole option, shall also have the right to require the Tenant to remove any alteration or improvement on or prior to the expiration or earlier termination of this Lease. If Landlord elects to require tenant to remove any alterations or improvements, then Landlord shall give written notice to the Tenant at least thirty (30) days prior to the expiration or termination date, and then Tenant shall, at Tenant’s sole expense, remove the alterations or improvements and restore the Leased Premises to the condition in which they existed on the Commencement Date of this Lease (reasonable wear and tear excepted).

(A) Retrofits to be Subsidized by Landlord. [*Insert retrofit provisions, if any*]

Section 9. Tenant's Furnishings and Fixtures. Tenant shall obtain the advance written permission of the Landlord to install its own furnishings, fixtures and equipment ("Tenant's FF&E") within the Leased Premises. Landlord's permission shall not unreasonably be withheld; however, all costs and expenses for the installation, maintenance, repair or replacement of Tenant's FF&E shall be the responsibility of the Tenant. Upon the expiration or earlier termination of this Lease, Tenant shall, at its sole expense, remove the Tenant's FF&E, shall repair any damage(s) caused by such removal, and shall restore the Leased Premises to the condition in which they were delivered to Tenant on the Commencement Date (reasonable wear and tear excepted). Notwithstanding the foregoing, Landlord and Tenant may, by mutual written agreement executed at least thirty (30) days prior to the expiration or termination date, agree upon the terms and conditions under which any of Tenant's FF&E may remain within the Leased Premises and become the sole property of the Landlord.

Section 10. Casualty. Neither the Landlord nor its authorized agent shall be liable for any damage or personal injury to Tenant, or to any other persons, or with respect to any personal property, caused by: fire, explosion, water, busted or leaking pipes, malfunctioning sprinklers, steam, plumbing, gas, oil, electricity, electrical wiring, rain, ice, snow or any leak or flow from or into any part of the Leased Premises or any improvements thereon, or due to any other cause whatsoever, unless such damage or injury is caused by a negligent act or omission of the Landlord or agent for which the Landlord or agent may be held responsible under the laws of the Commonwealth of Virginia.

Section 11. Signs. Tenant shall not display or erect any lettering, sign, advertisement, sales apparatus or other projection on the exterior of the Leased Premises (including interior window and door glass) without prior written consent of Landlord and permits as may be required by the City's zoning ordinance.

Section 12. Taxes. During the term of this lease, the Tenant shall be solely responsible for, and shall pay directly to the City of Charlottesville, any real estate taxes and assessments imposed on its leasehold interest, and its proportionate share of any stormwater utility fees. Tenant shall pay all personal property and business license taxes imposed by the Commonwealth of Virginia or the City of Charlottesville.

[Alternative provisions for the Taxes Section may be negotiated as part of Rent]

Section 13. Utilities.

- (A) Tenant shall be responsible for all deposits, costs and expenses for communications services used by Tenant at the Leased Premises, including, without limitation: telephone, cable, internet, wifi, security monitoring, and other communications service charges provided to or utilized by Tenant at the Premises. All applications and connections for communications services shall be made in the name of the Tenant only, and Tenant shall be solely liable for charges as they become due.
- (B) Landlord shall be responsible for other utility services consumed by Tenant at the Leased Premises, including, without limitation: water, sewer, gas, and electricity.

[Alternative provisions for the Utilities Section may be negotiated as part of Rent].

Section 14. Insurance. Tenant shall obtain and shall maintain throughout its tenancy within the Leased Premises, all of the required insurance noted below:

- (A) Commercial general liability insurance covering Tenant's activities and operations within the Leased Premises. The general liability insurance shall have limits of not less than \$1,000,000.00 per occurrence and shall include a \$250,00.00 limit for Damage to Rented Premises;
- (B) All Risk property damage insurance to insure the Tenant's contents and any betterments and improvements;
- (C) The insurance required by paragraphs (A) and (B), above, shall be endorsed: (i) to name the Landlord, and Landlord's officers, employees and agents, as additional insured parties, (ii) to provide a waiver of any subrogation right against Landlord, its officers, employees, and agents, in connection with any covered loss, and (iii) to provide Landlord thirty (30) days' advance written notice of cancellation or any material change in coverage.
- (D) Upon request made by Landlord, Tenant shall furnish to Landlord evidence of the insurance or endorsements required by paragraphs (A) through (C), above.

Section 15. Assignments and subleases. Tenant shall not assign its rights or obligations under this Lease Agreement, and shall not enter into any sublease of the Leased Premises, without the prior written consent of Landlord, which shall not unreasonably be withheld.

Section 16. Landlord's Right of Entry. Landlord or its agent(s) shall have a right to enter upon the Leased Premises at reasonable times and upon reasonable notice given to Tenant, for the purpose of inspecting the leased premises, or for performing any action Landlord has a right to perform.

Section 17. Indemnification. Tenant shall indemnify Landlord against all liabilities, costs, expenses (including reasonable attorney's fees) and losses incurred by Landlord as a result of (A) failure by Tenant to perform any covenant required to be performed by Tenant hereunder; (B) any accident, injury or damage caused by Tenant's negligence; (C) Tenant's failure to comply with requirements of any governmental authority; (D) any mechanics' lien or security agreement or other lien filed against the Building or the Leased Premises; or (E) any negligent act or omission of Tenant, its officers, employees, and agents.

Section 18. Damage by Fire or other Casualty.

- (A) If the leased premise shall be rendered untenable by fire or other casualty, Landlord may at its sole option terminate this lease as of the date of such fire or other casualty, upon 30 days written notice to Tenant. In the event that this lease shall be terminated, rent shall be equitably adjusted.

- (B) If this lease shall not be terminated under the provisions of subparagraph (A) above, rent shall be equitably apportioned according to the space rendered untenable, and Landlord shall at its own cost restore the Leased Premises to substantially its same condition immediately preceding such loss, provided that the cost of such work shall not exceed the insurance proceeds received by Landlord on account of such loss.
- (C) If Landlord elects to restore the Leased Premises and shall fail to substantially complete the same within 90 days after such fire or other casualty, due allowance being made for delay due to practical impossibility either Landlord or Tenant, by written notice to the other given within 15 days following the last day of said 90 day period, may terminate this lease as of the date of such fire or other casualty.

Section 19. Lessor's Remedies Upon Default.

- (A) If Tenant defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants, terms or conditions hereof, Landlord may give Tenant notice of such default, and if Tenant does not cure any such default within thirty (30) days after the giving of such notice (or, the default is of such nature that it cannot be completely cured within such 15-day period, if Tenant does not commence such curing within such 15 days and thereafter proceed with reasonable diligence and good faith to cure such default) then Landlord shall have the right to terminate this Lease and all rights of Tenant under this Lease by giving written notice to the Tenant.

If the Landlord gives written notice of termination, then this Lease shall terminate on the date specified in such notice. On or before the termination date, Tenant shall quit the Leased Premises and surrender the Leased Premises to Lessor, but Tenant shall remain liable as hereinafter provided. Upon the effective date of termination, the Landlord may at any time thereafter resume possession of the Leased Premises by any lawful means and remove Tenant or other occupants and their effects. No failure of the Landlord to enforce any term or condition of this Lease shall be deemed a waiver. In the event Landlord elects to terminate this Lease, Landlord may recover from Tenant: (a) any unpaid rent due and owing to the Landlord at the time of termination of the Lease; (b) the amount by which the unpaid rent that would have been earned after termination of the Lease until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided; (c) the amount by which the unpaid rent for the balance of the term of this Lease after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided; and (d) any other amount necessary to compensate Landlord for all damages proximately caused by Tenant's failure to perform its obligations under this Lease. No act of Landlord shall be construed as terminating this Lease except written notice given by Landlord to Tenant advising Tenant that Landlord elects to terminate the Lease. As used in this paragraph, the term "rent" means the Rent and any other costs, expenses or sums required to be paid by Tenant pursuant to the terms of this Lease Agreement.

(B) Upon the expiration or earlier termination of this Lease, or any renewals or extensions hereof, Tenant shall quit and surrender the Leased Premises to Landlord clean and in good order and condition, ordinary wear and tear excepted. Tenant shall, on or prior to the date of expiration or earlier termination, remove all its property and repair all damage to the Leased Premises caused by such removal and make reasonable restoration of the Leased Premises to the condition in which they existed prior to the installation of the property so removed. Any property of the Tenant that remains on the Premises after the expiration or termination of this Lease may be treated by the Landlord as abandoned property. Any item of property which is left on the Leased Premises that is worth less than \$1,000.00 (one thousand dollars) shall be deemed abandoned and may be immediately removed by the Landlord and disposed of as trash.

Section 20. Rules and Regulations of Landlord; Stipulations. Tenant covenants that the following rules and regulations shall be faithfully observed and performed by Tenant, its principals, employees and agents, and its invitees:

- (A) Tenant shall not do or permit anything to be done in the Leased Premises, or bring or keep anything therein, which will or may increase the Landlord's fire insurance premium(s) for the Building or Leased Premises; which will obstruct or interfere with the rights of the Landlord or any other tenant(s) in the Building; or which will violate any requirement of the Virginia State Fire Prevention Code
- (B) No animals shall be kept by Tenant in or about the Leased Premises and the Tenant shall not suffer any animal(s) to be kept in or about the Leased Premises.
- (C) Tenant shall keep all windows and exterior doors closed in the Leased Premises in order to assure proper functioning of heating and air conditioning systems and to prevent damage to the leased premises. Tenant shall be responsible for damage to the Leased Premises caused by its failure to comply with this paragraph.
- (D) Tenant shall comply with any other rule(s) or regulation(s) of Landlord of which Tenant has been given notice, and which are, in Landlord's judgment, necessary or appropriate for the safety, care and cleanliness of the Building, the common areas within the Building, or the Leased Premises.

Section 21. Quiet Enjoyment. Upon payment of the Rent herein provided for and upon performance of the terms of this Lease Agreement, Tenant shall have a right of quiet enjoyment of the Leased Premises.

Section 22. Notices. Notices required to be given under this Lease Agreement shall be given in writing and signed by the party giving the notice. The notice shall either be delivered or sent by certified U.S. mail, return receipt requested, and shall be addressed to the receiving party's address appearing below. A notice shall be deemed to have been given as of the date on which said notice is either delivered to the recipient, as

evidenced by a signed receipt, or if sent by mail, on the date such notice is deposited in the United States Mail. The parties' designated representatives for purposes of receiving notices and communications pertaining to this Lease are as follows:

Landlord: Charlottesville Director of Economic Development

P.O. Box 911
Charlottesville, Virginia 22902

Tenant: _____

Section 23. Governing Law. This Lease Agreement shall be construed under and governed by the laws of the Commonwealth of Virginia. Any action to enforce this Lease Agreement, and any other litigation arising out of this Lease Agreement, shall be brought within the Circuit Court for the City of Charlottesville, Virginia and such court shall be the exclusive venue.

Section 24. Successors in interest. This Lease shall be binding upon and shall inure to the benefit of the parties and their successors in interest.

Section 25. No Waivers. No failure of the Landlord to enforce any term or condition of this Lease Agreement, or any of its rights hereunder, shall be deemed a waiver.

WITNESS the following signatures and seals as of the date first above written.

Landlord:

CITY OF CHARLOTTESVILLE, VIRGINIA

BY: _____

Its: Authorized Agent (Director of Economic Development)

Tenant: _____

BY: _____

ITS: _____

Exhibits, Attached:

EXHIBIT A: Floor Plan of Leased Premises