

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	February 16, 2021
Action Required:	Approval of City Market Sub-Lease
Presenter:	Todd Brown, Director, Parks & Recreation
Staff Contacts:	Will Bassett, Business Manager, Parks & Recreation Justin McKenzie, City Markets Manager, Parks & Recreation
Title:	City Market Sub-Lease

Background:

Since 2015, the City Market has operated in the privately owned parking lot located at 100 Water Street. The market moved from the adjacent City-owned parking lot as part of the West 2nd Development project. The City Market has successfully operated at the 100 Water Street location for five (5) seasons with vendors and customers pleased with the larger and flatter space for the market. In 2020, the City Market did not operate at this location due to the COVID-19 pandemic. The market operated as a drive-thru only model at Pen Park, Darden-Towe Park and Charlottesville High School.

Staff are not sure what format the City Market will take in 2021, but the space is needed for a drive-thru model, pick-up only model or in-person market due to increased usage at the locations listed above. This sub-lease is to continue operating the City Market at the 100 Water Street parking lot for the 2021 season (April – December).

Discussion:

Staff believes that keeping the market in its current location (100 Water Street) is the best course of action to maintain market continuity for vendors and customers. At this time, the Tenant can only commit to a sub-lease for the 2021 market season. Approval of this sub-lease for the 2021 season will provide the City time to either secure a renewable sub-lease or determine a different long-range plan for the City Market location.

Community Engagement:

No formal community engagement has been done with this item. However, many City Market vendors have expressed a desire to remain in the current location (100 Water Street). Vendors also expressed an overall satisfaction rate of 84% with the current location in a 2019 survey.

Alignment with City Council's Vision and Strategic Plan:

This item aligns with City's vision of Economic Sustainability which states:

Our community has an effective workforce development system that leverages the resources of the University of Virginia, Piedmont Virginia Community College, and our excellent schools to provide ongoing training and educational opportunities to our residents. We have a business-friendly environment in which employers provide well-paying, career-ladder jobs and residents have access to small business opportunities. The Downtown Mall, as the economic hub of the region, features arts and entertainment, shopping, dining, cultural events, and a vibrant City Market. The City has facilitated significant mixed and infill development within the City.

This item also aligns with the following goals and objectives with the City's strategic plan:

Goal 4: A Strong, Creative and Diversified Economy

Objective 4.3: Grow and Retain Viable Businesses

Budgetary Impact:

The sub-lease for the 2021 market season is \$99,750. Lease payments will be made from the FY21 budget for April – June (\$34,125) and FY22 for July – December (\$65,625). Both are from the Parks & Recreation general fund budget.

Recommendation:

Staff recommends approval of this item.

Alternatives:

City Council could choose not to approve this sub-lease and the City Market could move back to its old location at City-owned metered parking lot. Staff would need to reduce the overall market by 20 vendors to fit within the old space. Additionally, the City would have to forgo parking meter revenue at the City-owned parking lot during the market season.

Attachments:

Resolution

Attachment 1 – Draft Sublease Agreement

**RESOLUTION
APPROVING CITY MARKET
SUBLEASE 2021**

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the proposed sublease between the City of Charlottesville and Skyview Parking, LLC, for a term beginning April 1, 2021, and concluding on December 18, 2021, is hereby approved.

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT is made as of the 1st day of January, 2021, by and between SKYVIEW PARKING, LLC, a Virginia limited liability company, Grantor, herein referred to as "Tenant", and the CITY OF CHARLOTTESVILLE, VIRGINIA, a municipal corporation, Grantee, herein referred to as "Subtenant".

WITNESSETH:

- 1. Subleased Property.** Effective April 1, 2021, the Tenant will be in rightful possession of the parcel of land located in the City of Charlottesville that is bounded by 1st Street South, East South Street, 2nd Street, S.E., and East Water Street, consisting of approximately .9920 of an acre, more or less, and shown on City Real Property Tax Map 28 as Parcel 62. The Tenant shall provide proof satisfactory to the Subtenant that it is in rightful possession of the Subleased Property upon request by the Subtenant. The property that is the subject of this Sublease Agreement is herein referred to as "the Subleased Property", and consists of all of Parcel 62, as shown on Exhibit A, dated December 16, 2014, and attached hereto. Tenant hereby subleases to Subtenant, and the Subtenant leases from the Tenant, the Subleased Property, under the terms and conditions set forth herein.
- 2. Warranty by Tenant.** Tenant represents and warrants to the Subtenant that, for the term of this Sublease Agreement and any extension thereof, it has the power and authority under its Lease with the owner of the Subleased Property to execute this Sublease Agreement and to carry out and perform all covenants to be performed by the Tenant under this Sublease Agreement without any requirement of consent by such owner, and that there are no outstanding uncured notices of default or termination.

Tenant agrees that Tenant shall not agree to the modification or amendment of the Lease Agreement between Tenant and the Owner of the Subleased Property during the term of this Sublease Agreement if such modification or amendment adversely affects the Subtenant's rights under this Sublease Agreement, decreases the size of the Subleased Property, or shortens the term of this Sublease Agreement, without the Subtenant's prior written consent.

- 3. Condition of Subleased Property.** The Subleased Property is currently used as a commercial surface parking lot open to the public for paid parking. The Tenant makes no representation or warranty as to the condition of the Subleased Property for the intended purpose of this Sublease prior to or at the time of the execution of this Sublease Agreement, and Subtenant agrees to accept the Subleased Property "as is" on the

effective date of this Sublease Agreement, provided there is no material change in the condition of the Subleased Property between the execution of this Sublease Agreement and the Commencement Date. The parties acknowledge that Tenant plans to make various improvements to the Subleased Property as shown in the exhibits, including but not limited to installing new parking pay stations, re-sealing the pavement, and re-striping the parking lines. This work is expected to be substantially complete by the commencement date, however in the event it is not Subtenant's remedy will be to either accept the Subleased Property as is or refuse to use the Subleased Property until such time as it is substantially completed. In the event Subtenant does not use the Subleased Property, rent will not be charged for those days it is not used.

4. **Term.** The initial term of this Sublease shall be for a period which begins on the 1st day of April, 2021 ("Commencement Date") and ends on the Saturday prior to December 25th, 2021.

5. **Use of Subleased Property.** The Subtenant warrants and covenants that the Subleased Property will only be used by the Subtenant as the temporary site for the City Market, operated by the Charlottesville Department of Parks and Recreation pursuant to Charlottesville City Code sec. 8-1 *et seq.* each Saturday between the hours of 5:00 a.m. and 3:00 p.m., during the months of April, May, June, July, August, September, October, November and December. The Tenant shall retain full use and enjoyment of the Subleased Property on all days and during all times when the Subleased Property is not reserved for the City Market, as specified herein. The Tenant and the Subtenant may agree in advance on additional days and times that the Subleased Property may be used by the Subtenant for a specified purpose, subject to the per diem rent set forth below. The parties agree that the pay stations which are installed by Tenant on the Subleased Property may be used during the sub-lease period by anyone who needs to obtain a parking receipt to park in an adjacent parking lot owned or controlled by Tenant. As such, Subtenant agrees to allow access as needed and signage as needed, at Tenant's expense, to accommodate such use.

6. **Rent.** The Subtenant shall pay the Tenant rent at the rate of Two Thousand, Six Hundred Twenty-Five and 00/100 Dollars (\$2,625.00) for each day that the City Market operates, or is scheduled to operate, on the Subleased Property. Each payment shall be due to Tenant in advance on or before the first day of each calendar month during the term of this Sublease. The monthly payment shall be calculated by multiplying \$2,625.00 times the number of scheduled City Market days during the month for which payment is being made.

7. **Quiet Enjoyment.** The Subtenant, on paying the rent and observing and keeping all covenants, warranties, agreements and conditions of the Sublease Agreement on its part to be kept, shall quietly have and enjoy the Subleased Property during the term of this Agreement, and any extension thereof.
8. **Land Use Approvals.** The Tenant and the Subtenant acknowledge that the Subtenant's intended use of the Subleased Property may require certain approvals, including, but not necessarily limited to, a special use permit and site plan approval. By its signature to this Sublease Agreement the Tenant hereby evidences its written consent for Subtenant to apply for and seek any and all land use and zoning approvals necessary for the future intended use of the property; provided, however, that Subtenant shall not be authorized to apply for or obtain any change in the land use or zoning status of the property that would be binding on Tenant after the expiration or termination of this Sublease Agreement unless Tenant shall have consented in writing in advance. The application, review and implementation of each such approval shall be at the Subtenant's sole expense.
9. **Improvements and Signage.** The Subtenant may, at its own cost and expense, install metered electric service to the Subleased Property for use during the City Market. Any such installation shall be subject to Tenant's prior written approval of facilities and equipment to be installed. Subtenant shall be responsible for installing lockboxes or otherwise securing the electric service from unauthorized use. Tenant shall not be responsible for any costs or charges incurred for the use of electric service installed and made available by Subtenant.

If there are proposed improvements to the Subleased Property that will be mutually beneficial to both the Tenant and Subtenant, which may include but not be limited to the electrical service referenced above and a new entrance to the property from South Street, the parties may enter into a memorandum of understanding that allocates both the responsibility for constructing the improvements and the agreed-upon costs for the improvements.

Subtenant may, at its own cost and expense, at any time make such alterations, changes, replacements, improvements and additions in and to the Subleased Property as it deems advisable or necessary for operation of the City Market, subject to Tenant's prior written approval of each such action, which approval shall not be unreasonably withheld or delayed. No improvements will be permitted which would interfere with the use of the Subleased Property by Tenant during times other than the times the City Market is in operation, or with the portion of the balance of Parcel 62 that is not included in the Subleased Property. No improvements shall be undertaken on the Subleased Property

unless and until the Subtenant shall have obtained any and all required local, state and federal governmental approvals and permits, and all such improvements shall be undertaken in strict compliance with all City, state and federal rules, regulations and laws.

The Subtenant shall have the right to place signs on the Subleased Property that are allowed under the provisions of the City of Charlottesville Zoning Ordinance, and necessary for the operation of the City Market, subject to Tenant's prior written approval, which approval shall not be unreasonably withheld or delayed. Subtenant and Tenant agree that Subtenant will install signs in prominent locations on the Subleased Property that inform motor vehicle operators that all vehicles must be removed from the Subleased Property at a specified time before the beginning of the City Market hours, and that vehicles not so removed from the property will be towed at the direction of the Subtenant at the expense of the vehicle owner or operator.

The Subtenant shall permit no mechanic's liens, materialmen's liens or other statutory liens to attach to the Subleased Property as a result of any alterations, improvements, additions or repairs performed by the Subtenant or at the Subtenant's direction. If any such lien or notice of lien rights shall be filed with respect to the Subleased Property, the Subtenant shall immediately take such steps as may be necessary to have such lien released, and shall permit no further work to be performed at the Subleased Property until such release has been accomplished.

Upon termination of this Sublease, Tenant shall have the option to retain ownership of all or any improvements, facilities and equipment installed by Subtenant during the term of this Sublease, or to require Subtenant to remove any or all of such improvements, facilities and equipment and repair at its expense any damage resulting therefrom.

10. Maintenance/Operational Expenses. The Subtenant shall, at its own cost and expense during the term of this Sublease, leave the Subleased Property in a reasonably clean, attractive condition following each day of City Market use, and shall not commit or allow any waste or damage to be committed on or to any portion of the Subleased Property. This includes but is not limited to, removing trash from the site following each City Market Use. Subtenant agrees to keep the toilet area well maintained and to perform any maintenance or cleanup required at any time as a result of the toilets on the Subleased Property. During months when the City Market is in operation Subtenant agrees to power wash the Subleased Property up to twice a month if it becomes unsightly or unsanitary, in the opinion of Tenant, as a result of Subtenant's use of the Subleased Property.

As part of its maintenance responsibilities, Subtenant agrees to comply fully with any applicable governmental laws, regulations and ordinances limiting or regulating the use, occupancy or enjoyment of the Subleased Property, and to comply with the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code, as supplemented and modified by duly enacted ordinances of the City of Charlottesville.

- 11. Taxes and Assessments.** The Subtenant shall not be responsible for the payment of any real property taxes, special assessments or storm water utility fees applicable to the Subleased Property.
- 12. Utilities and Services.** The Subtenant shall be responsible for and pay all costs and charges for utilities and services in connection with the Subtenant's occupancy and use of the Subleased Property for the City Market, including but not limited to permits and connection charges for gas, heat, light, water, sewer, power, telephone, cable, internet connection, janitorial, trash removal and other utilities or services. If Subtenant, in its sole discretion, determines that the foregoing utilities and services, or any of them, are necessary for its use of the Subleased Property for the City Market, the same shall be instituted and obligated for in the name of the Subtenant, and the Tenant shall have no responsibility whatsoever for the furnishing or cost of the same. In the event electric service is on a joint meter in Tenant's name, Subtenant agrees to reimburse such costs as may be determined by a sub-meter or by a recording of the meter readings before and after City Market events.
- 13. Damage or Destruction of the Leased Property.** During the term of this Sublease Agreement or any extension thereof the Tenant shall have no responsibility for any damage caused to the Subleased Property during the operation of the City Market, except that proximately caused by the negligence or misconduct of the Tenant or its employees or agents. The Subtenant agrees that all property of every kind and description kept, stored or placed on the Subleased Property by the Subtenant shall be at the Subtenant's sole risk.
- 14. Insurance.** Subtenant covenants and agrees that it will, at its own expense and at all times during the term of this Lease and any extension thereof, keep in full force and effect a policy of commercial general liability and property damage insurance with respect to the Subleased Property and the operations of the Subtenant on the Subleased Property with a good and solvent insurance company licensed to do business in the Commonwealth of Virginia. The limits of public liability for bodily injury and property damage shall not be less than One Million and 00/100 Dollars (\$1,000,000.00) per accident, combined single limit.

The Subtenant shall also maintain coverage against loss, damage or destruction by fire and such other hazards as are covered and protected against, at standard rates under policies of insurance commonly referred to and known as "extended coverage", as the same may exist from time to time.

Copies of Subtenant's policies of insurance (or certificates of the insurers) for insurance required to be maintained by the Subtenant shall be provided to Tenant on request.

15. Default. Each of the following occurrences relative to the Subtenant shall constitute default:

- a. Failure by the Subtenant in the performance or compliance with any of the terms, covenants, or conditions provided in this Sublease Agreement, which failure continues uncured for a period of sixty (60) days after written notice from the Tenant to the Subtenant specifying the items in default; provided, however, if such failure is of a type that is not reasonably capable of being cured within such sixty (60) day period such sixty (60) day period shall be extended for so long as the Subtenant is making diligent efforts to cure such default;
- b. Failure or refusal by the Subtenant to make the timely payment of rent or other charges due under this Sublease Agreement when the same shall become due and payable, provided the Tenant has given the Subtenant fifteen (15) days written notice of the same;

16. Assignment. The Subtenant shall have no right to assign or sublease, in any manner or fashion, any of the rights, privileges or interests accruing to it under this Sublease Agreement to any other individual or entity without the prior written consent of the Tenant, which shall not be unreasonably withheld or delayed.

17. Surrender. Upon termination of the Lease, except as the parties may otherwise agree, the Subtenant shall quit and surrender to the Tenant the Subleased Property in substantially its condition as of the Commencement Date, provided that the Subtenant shall remove from the Subleased Property any personal property belonging to the Subtenant or third parties, and at its cost and expense shall repair any damage caused by such removal. Personal property not so removed shall become the property of the Tenant, which may thereafter remove the property and dispose of it. On the termination of this Sublease, the Tenant may, without further notice enter on, reenter, possess and repossess the Subleased Property on days and at times that it would have otherwise been used by the Subtenant for the City Market.

- 18. Right of Entry.** Tenant, or Tenant's agents and designees, shall have the right, but not the obligation, to enter upon the Subleased Property or any part thereof during its use as the City Market, to inspect and examine the same to ensure compliance with the terms of this Sublease Agreement. The Tenant's failure to detect any violation or to notify the Subtenant of any violation shall not relieve the Subtenant of its obligations under the terms of this Lease.
- 19. Waiver.** The waiver by the Tenant of the Subtenant's breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein. The subsequent acceptance of rent hereunder by the Tenant shall not be deemed to be a waiver of any breach by the Tenant of the Subtenant of any term, covenant or condition of this Sublease regardless of knowledge of such breach at the time of acceptance or payment of such rent. No covenant, term or condition of this Sublease shall be deemed to have been waived by the Tenant or the Subtenant unless the waiver is in writing signed by the party to be charged thereby.
- 20. Entire Agreement.** This Sublease Agreement sets forth all the covenants, promises, agreements, conditions and understandings, between the Tenant and the Subtenant concerning the Subleased Property and there are no covenants, promises, agreements, conditions or understandings either oral or written, between them other than as herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Sublease Agreement shall be binding upon the Tenant or the Subtenant unless reduced in writing and signed by them.
- 21. Headings.** The section headings in this Sublease Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections of this Sublease nor in any way affect this Sublease.
- 22. Severability.** If any term, covenant or condition of this Sublease, or the application thereof, to any person or circumstance shall to any extent be invalid or unenforceable the remainder of this Sublease, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Sublease shall be valid and be enforced to the fullest extent permitted by law.
- 23. Non-Appropriation.** Payment and performance obligations of the Subtenant (City of Charlottesville), beyond the initial year of this Sublease Agreement, are expressly conditioned upon the availability of and appropriation by the City public funds thereafter in each subsequent fiscal year. When public funds are not appropriated or are otherwise

unavailable to support continuation of performance by the City in a subsequent fiscal period, this Sublease Agreement and the City's obligations hereunder shall automatically expire, without liability or penalty to the City. Within a reasonable time following City Council's adoption of a budget, the City shall provide the Tenant with written notice of any non-appropriation or unavailability of funds affecting this Sublease Agreement.

24. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

25. Notices. Any notice, demand, request, or other instrument which may be, or are required to be given under this Sublease Agreement, shall be in writing and delivered in person or by United States certified mail, return receipt requested, postage prepaid, and shall be address as follows:

If to the City:

John Blair
Acting City Manager
605 East Main Street
Charlottesville, VA 22902

If to the Tenant:

Skyview Parking LLC
c/o Woodard Properties
224 14th Street NW
Charlottesville, VA 22903

or at such other address as designated by written notice of a party.

IN WITNESS WHEREOF, the Tenant and the Subtenant have signed and sealed this Lease as of the date first above written.

CITY OF CHARLOTTESVILLE, VIRGINIA

By: _____

Name: John Blair

Title: Acting City Manager

Date: _____


Funds are available:

Approved as to form:

Director of Finance

City Attorney

SKYVIEW PARKING LLC

By:  _____

Name: Keith O. Woodard

Title: Manager

Date: Feb. 3, 2021