

CITY OF CHARLOTTESVILLE, VIRGINIA

CITY COUNCIL AGENDA MEMO



Agenda Date:	April 19, 2021
Action Required:	Public Hearing; Approval of Resolution
Presenter:	Lisa Robertson, Chief Deputy/ Acting City Attorney
Staff Contacts:	Lisa Robertson
Title:	<b>Lease of First Amendment Monument (Community Chalkboard) to The Bridge Progressive Arts Institute</b>

**Background:**

In 2005, the City of Charlottesville leased a portion of the Downtown Mall in front of City Hall to the Thomas Jefferson Center for the Protection of Free Expression (“TJ Center”) for the purpose of authorizing the installation of a monument celebrating the First Amendment. The lease gave the TJ Center control of slightly over 120 square feet of the Downtown Mall, including the First Amendment Monument (a/k/a Community Chalkboard) and required the TJ Center to maintain the monument. In 2019, the TJ Center wound up its operations and donated most of its assets to the University of Virginia’s School of Law. As it concluded its operations, rather than remove the monument (as required by its lease) the TJ Center located a new organization interested in taking charge of it.

**Discussion:**

The Bridge Progressive Arts Institute (hereinafter “Bridge”) desires to assume responsibility for the Community Chalkboard, under terms similar to those of the TJ Center’s lease. A copy of the proposed lease to the Bridge is attached to this Agenda Memo. The lease is for a five-year term. The Bridge agrees to repair and maintain the First Amendment Monument, including a weekly cleaning. The Bridge will maintain a \$1,000,000 liability insurance policy.

The Bridge reserves the right to conduct up to six of its own special events within the leased area each calendar year. The Bridge will be required to obtain a Special Events permit from the City, if required by the City’s Special Events regulations.

On a day-to-day basis, the general public will continue to have a right of access to use the leased premises, and to use chalk to write messages on the First Amendment Monument.

**Budgetary Impact:** None.

**Alternatives:** The Council could decline to adopt the Resolution.

**Attachments:**

- (1) Resolution
- (2) Proposed Lease

**Recommendation:** Approval.

**Suggested Motion:**

**“I move to adopt the Resolution to Approve a Lease of the First Amendment Monument (Community Chalkboard) and related premises to the Bridge Progressive Arts Institute.”**

**RESOLUTION  
TO APPROVE A LEASE OF THE FIRST AMENDMENT MONUMENT  
("COMMUNITY CHALKBOARD") AND RELATED PREMISES TO THE BRIDGE  
PROGRESSIVE ARTS INSTITUTE**

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE** that, having conducted a public hearing on the proposed lease of approximately 121 square feet of land on the Downtown Mall, in front of City Hall, to the Bridge Progressive Arts Institute (inclusive of all monuments, structures and improvements therein located) this Council hereby approves the proposed lease, upon the terms and conditions set forth within the lease agreement presented to this Council for consideration on April 19, 2021. The City Manager is hereby authorized to execute the Lease on behalf of the City.

## LEASE

THIS LEASE made this \_\_\_\_ day of \_\_\_\_\_, 2021 by and between **THE CITY OF CHARLOTTESVILLE, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia ("Lessor") and **The Bridge Progressive Arts Initiative**, a private, non-profit institution organized pursuant to the Virginia Nonstock Corporation Act on January 2, 1990 ("Lessee").

### WITNESSETH:

**WHEREAS**, the Lessor is the owner of the premises that are the subject of this Lease, which premises include an existing concrete and slate monument commonly referred to either as the First Amendment Monument or the Community Chalkboard ("Leased Premises"); and

**WHEREAS**, the Lessee's mission is to bridge diverse communities through the arts, and Lessee desires to lease the Leased Premises for the purpose of operating and maintaining the existing Community Chalkboard in furtherance of its mission to provide charitable services to residents of the City of Charlottesville; and

**WHEREAS**, the parties desire to enter into a formal, written agreement specifying their respective obligations and responsibilities relative to the Leased Premises and the structures and improvements located therein;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

### §1. THE PREMISES

Lessor agrees to lease and Lessee agrees to rent an area of the Downtown Mall located in front of City Hall, containing approximately 121 square feet, in the location identified on the drawing attached hereto as "**Exhibit A**" ("Leased Premises"), together with all structures and improvements located on and within said Leased Premises. *[Note: the referenced exhibit will be attached prior to signatures]*

### §2. LEASE TERM

(A) Term. This Lease shall be for a term of five (5) years, commencing on the date as of which the Charlottesville City Council adopts a Resolution approving this Lease ("Commencement Date"). One or more successive lease term(s) may be approved by mutual agreement of the parties, in the same manner as this Lease, as indicated by subsequent resolution(s) of the Charlottesville City Council.

(B) Termination by Lessor Upon Default. At any time, upon a material breach of this Lease by the Lessee, the Lessor may give written notice to the Lessee setting forth the nature of the breach, requesting cure within ten (10) calendar days from the date of the notice, and notifying the Lessee that a failure to cure within the 10-day period shall entitle the Lessor to immediate termination of this Lease. If the Lessee fails within the 10-day period to initiate a cure, or to diligently prosecute the cure to completion, the Lessor shall be entitled to terminate this Lease.

(C) Termination for Convenience. Each party shall have the right to terminate this Lease for its convenience, after first giving one hundred eighty (180) days' advance written notice to the other party.

### §3. RENT

Lessee shall pay to Lessor the sum of One Dollar (\$1 .00) per annum, payable in advance, on or before the Commencement Date, for the entire five-year initial term.

#### **§4. REAL ESTATE TAXES**

During the term of this lease, Lessee shall pay real estate taxes, if any, assessed or imposed on the Leased Premises by governmental authority.

#### **§5. USE OF PREMISES**

(A) The purpose of this Lease is to allow the Lessee to operate, repair and maintain the Community Chalkboard, and to allow the Lessee to conduct a certain number of events within the Leased Premises, as set forth within Section 5(D), below. The Lessee shall not use the Leased Premises for any other purpose without the prior written consent of the Lessor.

(B) Lessee shall repair and maintain the Community Chalkboard; however, Lessee shall not alter its design, appearance, materials of construction, or structure without the advance approval of both the City's Board of Architectural Review and City Council. Throughout the Lease Term, the Community Chalkboard shall be maintained as a concrete wall covered with panels of slate, which will serve as a board on which visitors may write using chalk only, along with a slate panel on which the First Amendment will be inscribed and a lectern or podium.

(C) Lessee shall be responsible for erecting and maintaining appropriate sign(s), in compliance with City ordinances regulating signs. Any signs erected within the Leased Premises will be consistent with the concept of the Community Chalkboard, and at least one sign will identify the purpose, means, manner in which the public is intended to use the monument.

(D) Lessee may conduct events within the Leased Premises to facilitate individuals' exposure to diverse speech and creative expression, and/ or to advance the mission of Lessee's organization; however, Lessee shall be limited to six (6) events per calendar year for which the City's Special Events Regulations require a permit. At least thirty (30) days prior to any event to be conducted within the Leased Premises, Lessee shall contact the City's Special Events Coordinator to inquire whether or not a permit will be required and to give the City advance notice that an event is planned to take place.

All of Lessee's events will be scheduled so as not to conflict with any events conducted within the nearby Pavilion, by the Lessee of the Charlottesville Economic Development Authority pursuant to a separate lease dated September 20, 2004. If the Lessee wishes to use amplified sound in connection with any event, Lessee will comply with the limits established in Charlottesville City Code Section 16-10(a), (b) and (d). If Lessee proposes to serve alcoholic beverages at an event, the Lessee shall obtain a special events permit from the City and shall also be solely responsible for obtaining all approvals, licenses or permits required by the Commonwealth of Virginia.

(E) The Lessee shall offer a telephone number at which Lessee may be contacted, and a location at which electronic messages can be sent to Lessee, each of which shall be posted prominently on a sign within the Leased Premises. The purpose of these means of communication are to enable members of the public to contact the Lessee with questions or complaints regarding the use or maintenance of the Community Chalkboard. The Lessee shall promptly handle and respond to such contacts and inquiries and shall not refer them to the Lessor. Nothing in this paragraph shall preclude Lessee's representative from contacting Lessor's representative to obtain information necessary for Lessee to respond to an inquiry or complaint.

(F) The Lessee shall repair and maintain the Community Chalkboard throughout the Term of this Lease, at its sole expense. Lessor shall be under no obligation to make any repairs or to perform any

maintenance of the Community Chalkboard. Lessee shall at all times keep and maintain the Leased Premises and the Community Chalkboard in good order, condition, appearance and repair. The Lessee shall be solely responsible for maintaining the Leased Premises, the Community Chalkboard, and other structures and appurtenances within the Leased Premises free and clear of conditions that may constitute a hazard to persons visiting the Leased Premises. Lessor shall be responsible for repairing any brick pavers within the Leased Premises, and shall have a right of entry to the Leased Premises for the purpose of making such repair. Lessor shall coordinate its entry with Lessee's representative, in advance. Upon discovering a brick paver that requires repair, Lessee shall promptly notify Lessor's representative.

(1) The Lessee shall keep all of the Leased Premises clean and free of rubbish, trash, litter, waste paper and filth.

(2) The Lessor shall have no obligation or responsibility to repair or replace the Community Chalkboard or any related improvements within the Leased Premises, in the event they are damaged or destroyed by fire or other casualty, or any act of vandalism.

(3) At least once per week, Lessee shall clean Community Chalkboard. This weekly maintenance shall include, without limitation: washing/ wiping all slate surfaces to render them clean and free of all chalk or other markings, removal of flyers and posters, no less frequently than once per week. Within twenty-four (24) hours of discovering any damage to the Community Chalkboard (e.g. chipped concrete or slate; surface defacement, such as marks made by non-chalk materials such as spray paint; etc.) Lessee shall initiate action to repair and restore the Community Chalkboard to its condition prior to the damage or defacement, and the Lessee shall diligently pursue such action so that it will be completed within a reasonable time. The Lessee will be allowed courtesy access to the Lessor's water source at no charge for the purposes of the weekly maintenance and cleaning.

(G) Electricity. The Lessee will be responsible for payment of any electricity charges incurred by the City as a result of Lessee's use of electrical outlets within the Leased Premises or any nearby City building or facility. Upon presentation by the City of a bill for electricity charges, Lessee shall promptly remit payment to the City.

## **§6. SURRENDER**

Upon the expiration or earlier termination of this Lease, Lessee shall quit and surrender the Leased Premises to the Lessor in good order and condition, free of the Community Chalkboard and all related structures and improvements. Lessee shall be solely responsible for the full cost of demolition, removal and disposal of debris. In the event that the Lessee fails to satisfy this obligation within 30 days after the date on which the Lease expires or is terminated, Lessor shall be entitled to remove and dispose of the Community Chalkboard and all related improvements, and to recover from Lessee all costs and expenses incurred by Lessor to restore the Leased Premises; upon receipt of an invoice from the City therefor, Lessee shall remit payment to the City within thirty (30) days of the date of the invoice.

Notwithstanding the foregoing:

(A) If the Lessee terminates the Lease pursuant to Sections 2(B) or 2(C) of this Lease, Lessee shall also restore the pavement within the Leased Premises as nearly as possible to the condition of the adjacent pedestrian sidewalk or plaza, using materials and plans approved in advance by the Lessor's Representative;

(B) If the Lease Term expires pursuant to Section 2(A) of this Lease and there is no mutual agreement for an additional Lease Term, Lessor shall be responsible for fifty percent of the total costs incurred by the Lessee to remove the Community Chalkboard, related structures and improvements; or

(C) If the Lease Term expires pursuant to section 2(A) after Lessor has given notice of its intention not to enter into a subsequent Lease term, Lessor shall be responsible for the full cost of removal and disposal of the Community Chalkboard and all related improvements.

#### **§7. INSURANCE**

Prior to the Commencement Date, Lessee shall obtain and thereafter, Lessee shall maintain throughout the Lease Term, at no cost or expense to the Lessor, a public liability insurance policy (including premises liability) covering bodily injury and property damage arising out of or in connection with public use of the Leased Premises, the Community Chalkboard and related structures and improvements, including, without limitation, any accidents occurring within in or about the Leased Premises. Coverage shall be provided in an amount no less than one million dollars \$1,000,000, combined single limit. Lessee may at any time during the term of the Lease request the Lessor to consider lowering the required coverage amount; upon receipt of such a request the Lessor will in good faith review the required coverages with its own liability insurance provider, but Lessor shall not be obligated to approve a reduction.

The Lessee's insurance policies shall name, or be endorsed to name, the Lessor, its officials, officers and employees, as additional insured parties. Upon commencement of this Lease, and upon each anniversary of the Commencement Date thereafter, Lessee shall provide the City with written documentation, satisfactory to the City, verifying the required insurance coverage.

#### **§8. INDEMNIFICATION OF LESSOR**

Lessee shall reimburse the Lessor for, and shall indemnify and hold Lessor, its officials, officers and employees, harmless from and against all costs, damages, claims, liabilities, expenses (including reasonable attorneys' fees). losses and court costs suffered by Lessor based on or arising out of (i) the use and occupancy of the Leased Premises by Lessee; (ii) any negligent act or omission of Lessee; and (iii) any breach of Lessee's obligations under this Lease, including failure to surrender and restore the Leased Premises upon the expiration or earlier termination of the Lease.

#### **§9. ASSIGNMENT AND SUBLEASE**

Lessee's obligations under this Lease may not be assigned or transferred, and the Leased Premises may not be subleased, either in whole or in part, except with the Lessor's prior written approval.

#### **§10. PARTIES' DESIGNATED REPRESENTATIVES**

(A) Lessor's designated representative, for purposes of all notices and communications required by this Lease, shall be the City's Director of Parks and Recreation. U.S.P.S. Mailing Address: P.O. Box 911, Charlottesville, Virginia, 22902. Telephone: 434-970-3260. Currently, the Director is Todd Brown (email: [brownt@charlottesville.gov](mailto:brownt@charlottesville.gov)). The City's Special Events Coordinator is an employee of the Department of Parks and Recreation; contact information is available on the City of Charlottesville website (currently: <https://www.charlottesville.gov/460/Special-Event-Permits>)

(B) Lessee's designated representative, for purposes of all notices and communications required by this Lease, shall be Lessee's Director. U.S.P.S. Mailing Address: 209 Monticello Road, Charlottesville, Virginia, 22902. Telephone: 434-218-2060. Currently the Director is Alan Goffinski (email: [director@thebridgепai.org](mailto:director@thebridgепai.org)).

#### **§11. MISCELLANEOUS**

(A) Integration. The provisions of this Lease contain represents the entire and integrated agreement between the Lessor and Lessee as to the Leased Premises and the structures and improvements located therein. The provisions of this Lease supersede all prior agreements, representations or understandings, written or oral, between the parties with respect to any of the matters set forth herein.

(B) Modifications. This Lease may be amended only by written instrument signed by both the Lessor and Lessee and approved by Resolution of the Charlottesville City Council.

(C) Severability. If any provision of this Lease, or the application thereof, is determined to be invalid or unenforceable, all other provisions shall remain valid and enforceable.

(D) Waiver. No provision of this Lease shall be waived except by written agreement of the parties. No waiver agreed to on one occasion shall be deemed a waiver of that provision as to any other or subsequent occasion, unless otherwise specifically stated in writing. No waiver of any provision shall affect or alter any other provisions of this Lease. No failure of the Lessor to insist upon strict compliance by the Lessee with any provision of this Lease shall operate to release, discharge, waive, modify, change or affect any of the Lessee's obligations hereunder.

E. Binding Effect. This Lease shall be binding upon and inure to the benefit of the parties, their successors and assigns.

**IN WITNESS WHEREOF**, the parties have caused this Lease to be executed, and each party represents and warrants that the undersigned individual whose signature appears on its behalf has been duly authorized to bind said party to the agreements and obligations set forth herein:

**LESSOR: THE CITY OF CHARLOTTESVILLE, VA**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Its: City Manager  
Authorized by City Council Resolution (4/19/2021)

**LESSEE: THE BRIDGE PROGRESSIVE ARTS INSTITUTE**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Its: Director

**APPROVED AS TO FORM:**

Office of the City Attorney, By: \_\_\_\_\_