



## CITY COUNCIL AGENDA December 20, 2021

### Members

Nikuyah Walker, Mayor  
Sena Magill, Vice Mayor  
Heather D. Hill  
Michael K. Payne  
J. Lloyd Snook, III  
Kyna Thomas, Clerk

### 4:00 PM Closed session as provided by Sections 2.2-3711 and 2.2-3712 of the Virginia Code (Boards and Commissions; personnel/contract discussions or negotiations)

Virtual/electronic meeting. Meeting begins and ends in open session.

### 6:30 PM Regular Meeting

Register at [www.charlottesville.gov/zoom](http://www.charlottesville.gov/zoom). Virtual/electronic meeting in accordance with a local ordinance amended and re-enacted October 4, 2021, to ensure continuity of government and prevent the spread of disease during a declared State of Emergency. Individuals with disabilities who require assistance or special arrangements to participate in the public meeting may call (434) 970-3182 or submit a request via email to [ada@charlottesville.gov](mailto:ada@charlottesville.gov). The City of Charlottesville requests that you provide a 48 hour notice so that proper arrangements may be made.

### CALL TO ORDER

### MOMENT OF SILENCE

### ROLL CALL

### AGENDA APPROVAL

### ANNOUNCEMENTS

### RECOGNITIONS/PROCLAMATIONS

### BOARD/COMMISSION APPOINTMENTS

### CONSENT AGENDA\*

1. Minutes: November 15 work session
2. Resolution: Appropriating funds from Progressive and National General Insurance companies for a loss associated with City of Charlottesville Traffic assets - \$17,448.47 (2nd reading)
3. Resolution: Appropriating funds for the Virginia Department of Transportation (VDOT) Bicycle and Pedestrian Safety Program for bicycle and pedestrian improvements at Preston Avenue and Harris Street - \$245,725 (2nd reading)
4. Resolution: Appropriating funds for the Virginia Community Flood Preparedness Grant – Stormwater Management Model of Moores Creek Watershed - \$307,000 (2nd reading)
5. Resolution: Appropriating 2020 Local Emergency Management Performance Grant (LEMPG) - \$7,500 (2nd reading)
6. Resolution: Appropriating funds for COVID Homelessness Emergency Response Program (C.H.E.R.P.) Community Development Block Grant - \$680,263 (1st of 2 readings)
7. Action Item: Approving the final disposition of the Thomas J. "Stonewall" Jackson statue (1 reading)

### CITY MANAGER RESPONSE TO COMMUNITY MATTERS and to COUNCILORS

**COMMUNITY MATTERS** Public comment for up to 16 speakers (limit 3 minutes per speaker). Preregistration available for first 8 spaces; speakers announced by Noon on meeting day (9:00 a.m. sign-up deadline). Additional public comment at end of meeting. Public comment will be conducted through

electronic participation while City Hall is closed to the public. Participants can register in advance at [www.charlottesville.gov/zoom](http://www.charlottesville.gov/zoom).

## **ACTION ITEMS**

8. Public Hearing/Res.: Consideration of amendments to the City's adopted FY2021 Budget (1st of 2 readings)
9. Ordinance\*: Amending and reenacting Chapter 2 (Administration), Article XVI (Police Civilian Review Board) to reestablish the City's Police Civilian Review Board as an oversight Board pursuant to Virginia Code Section 9.1-601 (2nd reading)
10. Ordinance\*: Approving the rezoning of land at 0 Nassau Street from R-2U (Two-Family Residential, University) to R-3 (Multifamily Residential) subject to preferred development conditions (2nd reading)
11. Resolution\*: Approving the final disposition of the City-owned sculpture titled "Their First View of the Pacific", also known as the Lewis, Clark and Sacajawea statue (1 reading)
12. Resolution\*: Consideration of the award of a contract for City Manager services (1 reading)

## **GENERAL BUSINESS**

13. Report: Charlottesville Affordable Housing Fund (CAHF) Program Review/Redesign Update
14. Report: Community Development Block Grant (CDBG)-HOME Program Task Force (Tabled from 12/6/21 work session)

## **OTHER BUSINESS**

### **MATTERS BY THE PUBLIC**

\*Action Needed

**CHARLOTTESVILLE CITY COUNCIL MEETING**  
**November 15, 2021**  
**Virtual/electronic meeting via Zoom**

**4:00 PM WORK SESSION**

The Charlottesville City Council met in an electronic meeting on Monday, October 18, 2021, in accordance with a local ordinance amended and re-enacted on October 4, 2021, to ensure continuity of government and prevent the spread of disease during the coronavirus State of Emergency.

Mayor Walker called the meeting to order at 4:01 p.m. and Clerk of Council Kyna Thomas called the roll, noting all members present: Mayor Nikuyah Walker, Vice Mayor Sena Magill, and Councilors Heather Hill, Michael Payne and Lloyd Snook.

**REPORTS**

**1. REPORT: Charlottesville Scholarship Project**

Charlottesville Scholarship Project (CSP) Chair Chris Cuthbert and CSP Program Manager Stephanie Leech made the presentation.

**What is the Charlottesville Scholarship Program?**

- Scholarship fund of the Charlottesville Area Community Foundation established by City Council in 2001
- Provides financial support to high school seniors and adults pursuing 2-year or 4-year undergraduate degrees, vocational training, or professional certifications
- Volunteer Board of Directors with one part-time Program Manager
- Volunteer Navigators support Scholars throughout course of study

**Impact of the CSP:**

- Council's initial \$250,000 investment has grown to more than \$1.3 Million today.
- 167 CSP scholarships awarded to date, totaling more than \$732,000
- 73 Scholars have achieved their degree or certification goal.
- 39 Scholars are currently supported.

**How CSP supports Scholars:**

- CSP typically awards 10 renewable Promise Scholarships annually.
- CSP awards can fund up to \$13,000 of the cost of a technical certification program, or 2- or 4-year undergraduate education.
- First-year awards are typically \$2,500, with renewal awards increasing by \$500 each year.
- Each Scholar is assigned a local adult volunteer Navigator who supports, advises, and encourages the student throughout the postsecondary course of study.

**Who is eligible for a CSP Promise Scholarship?**

Low-to Moderate-Income People seeking to further their education who fit into one of

the following categories:

- Charlottesville High School Seniors residing in the City of Charlottesville
- Charlottesville High School Graduates or GED recipients residing in the City of Charlottesville
- City of Charlottesville Employees
- Charlottesville City School System Employees

Mr. Cuthbert shared information about the Preston Coiner Scholarship:

- Established by the Coiner family in 2015 in honor of Preston Coiner
- Administered by CSP, and funded by the Preston Coiner Endowment
- One renewable award available per year, with annual payout calculated on a percentage of the Preston Coiner Endowment
- Application requires an original essay on some aspect of local history
- Open to Charlottesville or Albemarle public or private high school seniors or adult high school graduates residing in the City or County

He gave an overview of the annual calendar for the CSP and shared a list of community partners.

Councilor Snook spoke as the representative for City Council on the Board. He mentioned that a fundraising letter was just released, and that a favorable market has helped to grow the fund.

## **2. DISCUSSION: Conversation with Staff regarding Comprehensive Plan and Future Land Use Map (FLUM)**

James Freas, Director of Neighborhood Development Services (NDS), shared an overview of the proposed Comprehensive Plan, advising that it is not an all-encompassing plan but a guide or framework. He expressed concern about two specific areas of the Plan:

1. The Economic Development Chapter seems underdeveloped compared to other sections of the Plan.
2. How to advance implementation of the Plan: Zoning, Capital Improvement Plan, collectively the day-to-day actions of city departments, and funding. Mr. Freas shared that he will provide regular updates on implementation as well as engage staff more fully in the process with consultants. He advised that he will engage existing staff to have a more significant role in the zoning project and over time build out a long-range planning team as part of the department. He also advised that the recent update to the Comprehensive Plan includes a chapter on Engagement and that future work will need to implement suggested strategies.

Mr. Freas recommended adoption of the proposed Comprehensive Plan.

Council discussed topics such as:

- Population projections. (Councilor Snook asked Mr. Hamilton Lombard of the Weldon Cooper Center at UVA to provide context about the US Census. Mr. Lombard noted that the 2020 census may have underestimated the city population based on counts for

university students. The projection should have been anywhere from 49,000 - 51,000 but showed about 46,500 residents.

- The amount of city staff involvement in the feedback process with consultants
- Designating protected areas for commercial development
- Ensuring that zoning appropriately addresses areas of value to the city in terms of housing and commercial development
- Holding off on development in certain areas pending further zoning study
- Creating the opportunity for housing development to happen, while not guaranteeing any specific development
- Affordable housing opportunity in more areas of the city
- Consideration of neighborhood context
- Inclusionary zoning
- Opportunity for smaller-scale development
- Stabilizing extremes in the Charlottesville housing market
- Anticipated slow development pace over time
- Community engagement
- Keeping in mind racial equity and the use of a racial equity tool
- The intention and expectation of the Medium Intensity Residential designation
- Built-in assurances to prevent unintended consequences such as gentrification and displacement
- Tools besides zoning to address housing affordability

#### **PUBLIC COMMENT**

Mayor Walker opened the floor for public comment and advised speakers of the upcoming public hearing on the Comprehensive Plan during the 6:30 p.m. meeting.

- Phil Harway made comments on the Comprehensive Plan and Future Land Use Map.

#### **CLOSED MEETING MOTION**

On motion by Vice Mayor Magill, seconded by Councilor Snook, Council voted 5-0 (Ayes: Hill, Magill, Payne, Snook, Walker; Noes: none) to convene in closed session as authorized by Virginia Code Sections 2.2-3711 and 2.2- 3712, specifically:

- Section 2.2-3711(A)(7) and (A)(8), for the purpose of consultation with legal counsel pertaining to legal matters announced by the police chief at a press conference, and probable litigation related to such matters, because consultation in an open meeting would adversely affect the City's litigating or negotiation posture.

The work session adjourned at 5:44 p.m.

BY Order of City Council

BY Kyna Thomas, Clerk of Council

CITY OF CHARLOTTESVILLE, VIRGINIA CITY COUNCIL AGENDA



Agenda Date:	December 6, 2021
Action Required:	Appropriation
Presenter:	Mike Harlow, Traffic Supervisor
Staff Contacts:	Krisy Hammill, Senior Budget and Performance Analyst Mike Harlow, Traffic Supervisor
Title:	<b>City Traffic Assets Insurance Reimbursement – \$17,448.47</b>

**Background:**

The following City Traffic assets sustained damage from external accidents, which has impacted their proper function, and require repair/replacement after evaluation from the Public Works Traffic Division:

- **Streetlight** – Located at approximately 1321 West Main Street, incident occurred on June 7<sup>th</sup> 2020 – Progressive Insurance
- **Traffic Control Box** – Located at the corner of Wertland St and 10<sup>th</sup> St NW, incident occurred on July, 4<sup>th</sup> 2020 – National General
- **Pedestrian Signal** – Located on Shamrock Rd., incident occurred on May 12<sup>th</sup>, 2021 – Progressive Insurance

**Discussion:**

Risk Management has secured payment in the total amount of \$17,448.47, itemized amounts below:

Asset	Claim Number	Amount	Date Received
Streetlight	20267	\$2,856	8/30/2021
Traffic Control Box	21007	\$11,908.69	9/7/2021
Pedestrian Signal	21180	\$2,683.78	9/16/2021

The insurance monies will be utilized to recover repair/replacement costs for these assets.

**Alignment with Council Vision Areas and Strategic Plan:**

The reimbursement of the insurance monies for the asset loss associated with the aforementioned City Traffic assets support the City’s mission - “We provide services that promote equity and an

excellent quality of life in our community”

The anticipated use of the reimbursed monies also aligns with Goal 3.2 – Provide reliable and high quality infrastructure.

**Community Engagement:**

N/A

**Budgetary Impact:**

There is no impact to the General Fund, as these are reimbursed funds from an insurance carrier for a loss.

**Recommendation:**

Staff recommends approval and appropriation of insurance monies.

**Alternatives:**

If the insurance reimbursement is not appropriated, the Public Works Department will not be able to recover this funding to repair/replace the cited Traffic assets.

**Attachments:**

Appropriation Resolution

**RESOLUTION APPROPRIATING FUNDS for  
City Traffic Assets Insurance Reimbursement  
\$17,448.47**

**WHEREAS**, Progressive and National General Insurance companies are reimbursing the City of Charlottesville for a loss associated with City of Charlottesville Traffic assets;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that a total of \$17,448.47 be appropriated in the following manner:

**Revenues**

\$17,448.47    Fund: 105    Cost Center: 2471001000                      G/L Account: 451110

**Expenditures**

\$17,448.47    Fund: 105    Cost Center: 2471001000                      G/L Account: 541040

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of funds from Progressive and National General Insurance companies.



CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	December 6, 2021
Action Required:	Appropriation of Grant Funds
Presenter:	Amanda Poncy, Bicycle and Pedestrian Coordinator, Public Works
Staff Contacts:	Amanda Poncy, Bicycle and Pedestrian Coordinator, Public Works Tony Edwards, Development Services Manager, Public Works
Title:	<b>VDOT BPSP Grant for bicycle and pedestrian improvements Preston Avenue and Harris Street \$245,725</b>

**Background:**

On September 6, 2016, City Council approved a Resolution of Support to apply for Pedestrian Safety Improvements Funding under the Virginia Department of Transportation (VDOT) Bicycle and Pedestrian Safety Program (BPSP). The purpose of the BPSP is to evaluate proposals addressing non-motorized crashes and risks in Virginia. Proposals target the reduction in the number and severity, or the risk of and exposure to crashes. The intent of the BPSP is to promote proposals that address a known safety or accommodation issue, are smaller in scale, and can be completed quickly.

In June 2017, the City received notice that a number of intersection projects that were submitted received funding in FY22/23. The intersection of Preston Avenue and Harris Street is one of the intersections that was identified for pedestrian crossing improvements. New pedestrian curb ramps, median refuges, and revised pedestrian crossings will reduce pedestrian crossings widths, increase visibility of pedestrians, reduce pedestrian time within the roadway, and minimize out of distance pedestrian travel. VDOT has granted the city \$245,725 for these improvements.

**Discussion:**

The projects that were submitted for BPSP funding in 2016 were identified based on the results of the Timmons Group ADA Pedestrian Signal study and the Streets that Work Plan recommendations. Each intersection will be reconstructed with ADA compliant curb ramps, pedestrian pushbuttons, and crosswalk and bicycle pavement marking improvements.

In June 2017, staff was notified that the following intersections were awarded for FY20-23:

- a. Monticello/Ridge (also SIA) - \$209,500
- b. Monticello/2nd Street (also SIA) - \$338,230
- c. Cherry/Ridge - \$265,230
- d. Preston/Harris - \$245,725**
- e. Grady/10<sup>th</sup> - \$291,000

The City of Charlottesville selected the intersection of Preston Avenue at Harris Street as a candidate for pedestrian improvements. Citizen issues were combined with City planner's knowledge to identify the intersection as a candidate that would provide benefit to the community. The intersection has been in its current geometric configuration since the 1990's (20+ years). The pedestrian crossings from north to south across Preston Avenue are long (near 100 feet in length) and although they do pass through a median area, there is no pedestrian curb ramp access or surface to leave the roadway. Foliage and bridge structures within the median introduce sight distance issues that reduce the ability for vehicles to see pedestrians. High speeds on Preston Avenue increase severity of potential crashes. Commercial land uses occupies the 4 corners of the intersection.

The pedestrian crossing across Preston Avenue is long and does not provide any safe haven for the pedestrian/bicyclists. Due to the commercial nature of the eastbound approach and the multiple commercial entrances near the intersection, sight distance is reduced for drivers approaching the intersection and introduces additional risk for the pedestrians/bicyclists during turning maneuvers.

As such, two pedestrian accidents have occurred at the intersection during the review period. Both involved vehicles making a right turn on red maneuver and striking a pedestrian/bicyclist that was crossing the roadway and had the right-of-way.

The project involves the installation of new pedestrian curb ramps on all 4 corners of the intersection in order to meet ADA compliance and align properly with pedestrian crosswalks. The existing pavement markings for pedestrians within the intersection will need to be removed/replaced. New pavement markings for relocated pedestrian crosswalks and stop bars are included. The project also involves installing pedestrian curb ramps and sidewalk within the median of Preston Avenue to provide a safe haven for crossing pedestrians/bicycles. The median sidewalk will increase visibility of pedestrians, reduce pedestrian crossing widths, and minimize out of distance pedestrian travel.

#### **Alignment with City Council's Vision and Strategic Plan:**

This initiative supports Council's Vision to be a "Connected Community" ("the City of Charlottesville is part of a comprehensive, regional transportation system that enables citizens of all ages and incomes to easily navigate our community") and "America's Healthiest City" ("we have a community-wide commitment to personal fitness and wellness, and all residents enjoy our outstanding recreational facilities, walking trails, and safe routes to schools").

In addition, the project contributes to Goals 1 and 3 of the Strategic Plan, to be an inclusive, self-sufficient community and a healthy and safe city.

The initiative further implements recommendations within the ADA Transition Plan (2013), Comprehensive Plan (2013), Bicycle and Pedestrian Master Plan (2015), Streets that Work Plan (2016) and supports the City's Healthy Eating Active Living (HEAL) Resolution.

#### **Community Engagement:**

The BPSF projects draw heavily from the recommendations included in the Streets that Work Plan, which had extensive community outreach. A full account of the public engagement process is available at [www.charlottesville.org/streetsthatwork](http://www.charlottesville.org/streetsthatwork) under the Streets That Work Community

Process tab. Community members will continue to be engaged throughout the design and construction process.

**Budgetary Impact:**

No additional City funding needs to be appropriated as the BPSP funding does not require a local match.

**Recommendation:**

Staff recommends approval and appropriation of VDOT grant.

**Alternatives:**

If grant funds are not appropriated, the project will not be implemented.

**Attachments:**

Appropriation Resolution

**RESOLUTION APPROPRIATING FUNDS for**  
Virginia Department of Transportation (VDOT) Bicycle and  
Pedestrian Safety Program (BPSP)  
Preston Ave/Harris Street \$245,725

**WHEREAS**, the Bicycle and Pedestrian Safety Program (BPSP), provides Federal funding for intersection improvements that target the reduction in the number and severity, or the risk of and exposure to crashes, and has awarded the City of Charlottesville \$245,725 for such improvements;

**WHEREAS**, the BPSP program is a 100% reimbursement program requiring the City to meet all federal guidelines to qualify,

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that the following is hereby appropriated in the following manner:

**Revenues**

\$245,725	Fund: 426	WBS: P-01069	G/L Account: 430120
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**Expenses**

\$245,725	Fund: 426	WBS: P-01069	G/L Account: 519999
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CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	December 6, 2021
Action Required:	Appropriation
Presenter:	Andrea Henry, Water Resources Protection Program Administrator
Staff Contacts:	Jack Dawson, Department of Public Works Kristel Riddervold, Department of Public Works Krisy Hammill, Office of Budget and Performance Management
Title:	<b>Virginia Community Flood Preparedness Grant – Stormwater Management Model of Moores Creek Watershed - \$307,000</b>

**Background:**

The City of Charlottesville is one of the first 19 localities to be awarded a grant through the Virginia Community Flood Preparedness Fund (CFPF). The Governor and General Assembly established the fund in 2020 to assist communities in building resilience to the impacts of climate change, including floods.

The Community Flood Preparedness Fund is allocated 45 percent of the revenue Virginia generates through the Regional Greenhouse Gas Initiative. An estimated \$75 million per year will be available through the matching grant program.

In October 2021, the City of Charlottesville received a Letter of Award for a CFPF grant totaling \$153,500 from the Virginia Department of Conservation and Recreation for a two-dimensional (2D) stormwater management model of Moores Creek watershed. The funds are intended to support the model buildout, a report documenting methodology and results, and training and software for City staff. This is the first in an intended series of 3 grants that will fund model development in the portions of all 3 major watersheds (Rivanna River, Meadow Creek, and Moores Creek) within Charlottesville city limits. The current grant award includes:

CFPF Grant #21-01-18: Flood Protection and Prevention Study - \$153,500

City matching funds are required for the grant of at least 50% of the total study cost, totaling \$153,500, and have been identified from two funding sources. The identified funding was established in the Gas Fund prior to the adoption of the Stormwater Utility Fund (SUF) in order to support environmental-related program development and implementation efforts, including demonstration projects and grant match requirements. The accounts to be used are:

631 - 2000095: \$136,153.00  
426 – P-00653: \$17,347.00

## **Discussion:**

In 2008, the City of Charlottesville, in partnership with the Army Corp of Engineers (USACE), hired URS to develop a comprehensive stormwater model representing the majority of the City's stormwater management inventory. The existing model represents the input data and best methodology available in 2008. The purpose of this grant application is to update the portion of the existing model located in the Moores Creek watershed so it can be used as initially intended. Additionally, a 2D rendering will expand the model beyond its originally identified applications.

The primary function of the model is to analyze the watershed by using configurations to quantify flooding associated with both existing and future watershed conditions. Potential drainage improvement projects can be geospatially mapped in relation to areas vulnerable to flooding, so City staff can make assessments about the value of individual projects. The advantage of this approach is that the entire drainage system can be evaluated on a consistent, system-wide basis.

Consistent and transparent methods of analysis when determining how and where to spend taxpayer money are essential for prioritizing improvement projects in an equitable manner. Although additional consideration factors, including other master plan objectives, location-specific funding opportunities, a history of underinvestment, etc., can also be incorporated into a system of project selection, the foundation of project prioritization should be the quantification of potential adverse impacts to community members from flooding events. An objective analysis using industry standard methodology applied over the entire City is a key element to achieving this goal.

The model will also have the ability to identify future areas of vulnerability due to climate change-influenced storm events. A series of climate-informed design storms will be input into the model to begin the development of a sensitivity analysis. This analysis will determine the future conveyance and treatment needs of City drainage infrastructure and is an important component of the City's climate resiliency strategy.

## **Alignment with City Council's Vision and Strategic Plan:**

The development of a stormwater management model directly supports several strategic initiatives in the 2013 City of Charlottesville Comprehensive Plan (Environment):

- 4.3: Assess infrastructure and prioritize solutions for the repair, upgrade, and improvement of the City's stormwater infrastructure, utilizing green infrastructure when advisable.
- 4.4: Identify and track stormwater hazards such as flooding and drainage problems that may threaten people and property and identify or establish funding to remedy or prevent safety hazards.

Additionally, the model will be an important tool in determining the best improvement strategies to apply to specific drainage problems, so that benefits can be seen across the watershed. This supports the following strategic initiatives in the 2013 City of Charlottesville Comprehensive Plan (Environment):

- 3.6: Reduce loss of open waterways and habitats by daylighting pipes streams when possible and discouraging additional underground piping of city streams.
- 4.6: Examine feasibility of sustainable municipal stormwater management facilities such as

rain gardens to facilitate higher floor to area ratios (FAR) on urban lots, particularly in or adjacent to target zones such as entrance corridors.

**Community Engagement:**

The need for a comprehensive stormwater management plan was identified in the 2012 Water Resources Protection Program (WRPP) Advisory Committee Report. The proposed stormwater management model will be the most comprehensive approach to date in the development of a City-wide master plan. Additionally, the model will incorporate community-driven information in the form of drainage issue reporting. The 2D component of the model will be an important tool in future community outreach efforts because it can map areas that will be vulnerable to flooding. These visuals will be important for community flood awareness and the City's flood mitigation programs.

**Budgetary Impact:**

Grant funds will be appropriated and expended from a grants fund account. The \$153,500 financial match for these grant awards will be allocated from previously appropriated funding in the Gas fund and the City's CIP fund.

**Recommendation:**

Staff recommends approval and appropriation of grant funds.

**Alternatives:**

Council may decline the grant.

**Attachments:**

- DCR Letter of Award
- DCR Grant Agreement
- VRA ACH Authorization for Grant Disbursements

**RESOLUTION APPROPRIATION FUNDS FOR  
Virginia Community Flood Preparedness Grants — Stormwater Management Model of  
Moores Creek Watershed  
\$307,000**

**WHEREAS**, the City of Charlottesville has been awarded \$153,500 from the Virginia Department of Conservation and Recreation for the development of a two-dimensional stormwater management model; and

**WHEREAS**, as a match of local funds in the amount of \$153,500 is required and will be funded using previously appropriated funds;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that a total of \$307,000 be appropriated in the following manner:

Revenues - \$307,000

\$153,500	Fund: 209	I/O: 1900433	G/L Account: 430110
\$153,500	Fund: 209	I/O: 1900433	G/L Account: 498010

Expenditures - \$307,000

\$307,000	Fund: 209	I/O: 1900433	G/L Account: 599999
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Transfers:

\$136,153	Fund: 631	I/O: 2000095	G/L Account: 561209
\$ 17,347	Fund: 426	WBS Element: P-00673	G/L Account: 561209

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$153.500 from the Virginia Department of Conservation and Recreation.



CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	December 6, 2021
Action Required:	Appropriation
Presenter:	Maribel Street, Emergency Management Coordinator
Staff Contacts:	Symia Tabron, Accountant
Title:	<b>Local Emergency Management Performance Grant (LEMPG) - \$7,500</b>

**Background:**

The Virginia Department of Emergency Management has allocated \$7,500 in 2020 Emergency Management Performance Management Grant (LEMPG) funding from the Federal Emergency Management Agency to the City of Charlottesville. The locality share is \$7,500, for a total project of \$15,000.

**Discussion:**

The City of Charlottesville is the grant administrator for this grant, which will be passed to the Office of Emergency Management at the Charlottesville-UVA-Albemarle County Emergency Communications Center. The grant award period is July 1, 2020 to June 30, 2021. The objective of the LEMPG is to support local efforts to develop and maintain a Comprehensive Emergency Management Program. The 2020 LEMPG funds will be used by the Office of Emergency Management to enhance local capabilities in the areas of planning, training and exercises, and capabilities building for emergency personnel and the whole community.

**Alignment with City Council's Vision and Strategic Plan:**

This emergency management program supports City Council's America's Healthiest City vision, specifically, "Our emergency response system is among the nation's best," as well as Goal 2 of the Strategic Plan, specifically sub-elements 2.1 (Provide an effective and equitable public safety system) and 2.4 (Ensure families and individuals are safe and stable). Maintaining our response and recovery capability is an on-going process that requires regular planning discussions and well as training and exercising with community response partners. Citizen preparedness, including awareness of local hazards and actions they can take to survive and recover from an emergency is a critical part of the local response system.

**Community Engagement:**

The LEMPG engages the community through public outreach efforts led by the Office of Emergency Management. Increasing citizen awareness of hazards and promoting steps individuals can take to prepare for, respond to, and recover from emergency situations is a critical priority for the Office of Emergency Management. Community outreach efforts include presenting on preparedness to community groups and designing and implementing targeted messaging through various media. This funding allows the Assistant Emergency Manager to dedicate additional time in support of this mission.

**Budgetary Impact:**

This has no impact on the General Fund. The funds will be expended and reimbursed to a Grants fund. The locality match of \$7,500 will be covered with an in-kind match from the Office of Emergency Management budget.

**Recommendation:**

Staff recommends approval and appropriation of grant funds.

**Alternatives:**

If grants funds are not appropriated, the Office of Emergency Management will not be able to completely fund the full-time salary for the Assistant Emergency Management Coordinator. A reduction in time for this position will negatively impact the quantity and quality of public outreach on emergency preparedness to community members.

**Attachments:**

Appropriation Resolution

**RESOLUTION APPROPRIATING FUNDS for  
2020 Local Emergency Management Performance Grant (LEMPG)  
\$7,500**

**WHEREAS**, the City of Charlottesville has received funds from the Virginia Department of Emergency Management in the amount of \$7,500 in federal pass through funds and \$7,500 in local in-kind match, provided by the Charlottesville-UVA-Albemarle Emergency Communications Center Office of Emergency Management; and

**WHEREAS**, the funds will be used to support programs provided by the Office of Emergency Management; and

**WHEREAS**, the grant award covers the period from July 1, 2020 through June 30, 2021;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$7,500 is hereby appropriated in the following manner:

**Revenue – \$7,500**

\$7,500      Fund: 209      I/O: 1900434      G/L: 430120 State/Fed pass thru

**Expenditures - \$7,500**

\$7,500      Fund: 209      I/O: 1900434      G/L: 599999 Salaries

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$7,500 from the Virginia Department of Emergency Management, and the matching in-kind funds from the Charlottesville-UVA-Albemarle Emergency Communications Center Office of Emergency Management.

CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	December 20 <sup>th</sup> , 2021
Action Required:	Approval and Appropriation
Presenter:	Misty Graves, Interim Director, Human Services
Staff Contacts:	Misty Graves, Interim Director, Human Services
Title:	<b>COVID Homelessness Emergency Response Program (C.H.E.R.P.) – Community Development Block Grant Amendment (\$680,263)</b>

**Background:**

A C.O.V.I.D. Homelessness Emergency Response Program amended grant of \$680,263 has been awarded to support non-congregate emergency shelter operations and administrative expenses from July 1, 2021 to March 31, 2022. The Thomas Jefferson Area Coalition for the Homeless plans, designs and coordinates the local homelessness continuum of care and is the provider of record for data collection.

**Discussion:**

The City of Charlottesville has staff from the departments of Human Services and Social Services taking leadership roles in the governance of T.J.A.C.H. This grant supports the additional costs associated with maintaining the required data associated with the C.O.V.I.D. global pandemic.

**Community Engagement:**

This grant and plan are the product of extensive engagement of the service provider community for persons experiencing homelessness. This partnership is reflective of the new governance model for T.J.A.C.H. and the priority requests of the Interfaith Movement Promoting Action by Congregations Together (IMPACT).

**Alignment with City Council’s Vision and Strategic Plan:**

This grant advances the City of Charlottesville’s Strategic Plan Goal #1 of an inclusive community of self-sufficient residents. Specifically, it will facilitate the objective of increasing affordable housing options.

**Budgetary Impact:**

This grant will be entirely Federal pass-through funds. No local match is required. There is no budget impact for the City of Charlottesville. All funds will be distributed to sub-recipients for

service provision.

**Recommendation:**

Staff recommends approval and appropriation of grant funds.

**Alternatives:**

Council may elect to not accept the funds and the community will not have the capacity to administer the following services to persons experiencing a housing crisis: Emergency low-barrier shelter, coordinated assessment, rapid rehousing, H.M.I.S., coalition coordination and administration.

**Attachments:**

Appropriation

**RESOLUTION APPROPRIATING funds for  
COVID Homelessness Emergency Response Program (C.H.E.R.P.) Community  
Development Block Grant - \$680,263**

**WHEREAS**, The City of Charlottesville, through the Department of Human Services, has received the C.H.E.R.P. Grant from the Virginia Department of Housing and Community Development in the amount of **\$680,263**.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that the sum of **\$680,263** is hereby appropriated in the following manner:

Revenues

**\$680,263**      Fund: 209      IO: 1900448      G/L: 430120 Federal Pass Thru

Expenditures

**\$680,263**      Fund: 209      IO: 1900448      G/L: 530550 Contracted Services

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon receipt of **\$680,263** in funds from the Virginia Department of Housing and Community Development.

CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	<b>December 20, 2021</b>
Action Required:	Approval of Resolution (1 Reading)
Presenter:	Ashley Marshall, Deputy City Manager
Staff Contact:	Ashley Marshall, Deputy City Manager
Title:	<b>Resolution Approving Final Disposition of the Jackson Statue</b>

**Background:**

In July 2021 the City removed the statue of Stonewall Jackson from Court Square Park, following the process set forth within Va. Code §15.2-1812. The resolution authorizing the removal, as City Charter, and applicable state law all reserve and confer upon the City Council the sole authority to determine the final disposition of this statue.

**Discussion:**

The City publicly advertised that it was inviting proposals from persons interested in acquiring ownership of the Statue. Among those proposals was an offer from LAXART, a charitable institution or organization organized under the laws of the State of California. LAXART is engaged in a project (a joint venture with the Los Angeles Museum of Contemporary Art (MOCA)) to commemorate the historical events that occurred within the City of Charlottesville August 11-12, 2017 and in other cities across the nation, when those cities undertook to remove monuments that had stood for a century as symbols of white supremacy. LAXART will install the Jackson Statue at MOCA, as part of an exhibit that will include other similar statuary, all of which will be exhibited alongside works of contemporary art presented in a manner that will contextualize these monuments socially, historically, and art-historically, in order to critique and confront the false narrative and ideology of the Lost Cause. LAXART has offered a monetary sum of \$100,000.00 to the City for both the Lee and Jackson Statues.

On December 6, 2021 City Council approved a donation of the Lee Statue to a different charitable institution/ organization. Following that meeting staff contacted LAXART, and LAXART confirmed that it will offer \$50,000.00 to the City to acquire the Jackson Statue.

**Budgetary Impact:**

If approved, the monetary compensation offered by LAXART will defray a portion of the funds expended by the City to remove the Jackson Statue from Court Square Park.

**Alternatives:**

City Council could retain ownership of the Jackson Statue.

**Community Engagement:** yes. Over a course of months in 2016, the BRC and several working subcommittees (for public engagement; case studies; historic site inventories; and historical context/background) conducted studies, engaged with the community through public meetings and forums, and deliberated. According to the BRC's Interim Report to City Council (September 19, 2016) over 150 people attended the BRC's first community forum at the Jefferson School on July 27, 2016. The BRC gathered for 15 meetings (including 3 public forums), held at different locations throughout the City to make it easier for members of the public to attend and comment. From March 2017 to April 2021 the City was tied up in litigation and could not carry out its desired actions. On June 7, 2021 City Council conducted a public hearing, pursuant to the process set forth within Va. Code §15.2-1812(B).

**Alignment with Council Vision Areas and Strategic Plan:**

Yes.

**Attachments:**

- Proposed Resolution
- LAXART Offer



**RESOLUTION  
APPROVING A FINAL DISPOSITION OF  
THE STATUE OF STONEWALL JACKSON**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE that all of the City’s right, title and interest in and to the statue of Confederate General Thomas J. “Stonewall” Jackson, including its base, is hereby conveyed to LAXART, a charitable institution/ organization organized under the laws of the state of California, in return for monetary compensation in the sum of \$50,000.00. This disposition is final.

I, Kyna Thomas, do hereby certify that the foregoing writing is a true, correct copy of a resolution duly adopted by the City Council of the City of Charlottesville, Virginia, by a vote as recorded below, at a regular meeting held on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Clerk of Council, City of Charlottesville

	<u>Aye</u>	<u>Nay</u>
Mayor Walker	_____	_____
Vice Mayor Magill	_____	_____
Councilor Hill	_____	_____
Councilor Payne	_____	_____
Councilor Snook	_____	_____

# LAXART

## Letter of Transmission

Please accept the accompanying documents as an official offer of acquisition for the sculptures and accompanying pedestals of Confederate Generals Robert E. Lee by Henry Shrady and Leo Lentelli and Jonathan "Stonewall" Jackson by Charles Keck owned by the City of Charlottesville on behalf of LAXART. LAXART is eligible to receive donations of property under Virginia Code 15.2-953, Article B, Section ix as a 501(c)3 non profit recreational organization. This offer shall be valid for one hundred and twenty (120) days from the date of receipt. The following individuals are authorized to negotiate on behalf of LAXART:

Hamza Walker - Executive Director - [hamza@laxart.org](mailto:hamza@laxart.org) - (323) 871-4140

Margaret Morgan - Board Chair - [margaret.morgan@gmail.com](mailto:margaret.morgan@gmail.com) - (213) 880-5601

Also attached are proof of LAXART's 501(c)3 status and the bylaws which document both the Board Chair and Executive Director's authority in matters such as these.

Sincerely,



Hamza Walker

# LAXART

15 October 2021

Dear Mr. Boyles,

I write as director of [LAXART](#), a Los Angeles-based non-profit visual arts organization. We respectfully submit this proposal to secure ownership of both the Robert E. Lee and Stonewall Jackson statues and their granite bases. The statues will each be given to an artist to use as the basis for a new work of art. These newly commissioned works will be part of an exhibition whose working title is MONUMENTS. This exhibition is being co-curated by myself and the internationally renowned artist [Kara Walker](#) (no relation). Slated to take place in the Fall of 2023, MONUMENTS is a joint venture between LAXART and the Los Angeles [Museum of Contemporary Art](#) (MOCA) which will host the exhibition at the Geffen gallery, the larger of its two downtown locations. The exhibition will feature a selection of decommissioned Confederate monuments shown alongside works of contemporary art. As its name suggests, MONUMENTS will be a monumental undertaking. The two newly commissioned works fashioned from the Charlottesville Lee and Stonewall Jackson monuments will be the centerpiece of the exhibition.

After the events of August 11 and 12, 2017, the Charlottesville monuments became infamous. Wittingly or not, those who rallied around them exposed these statues for what they are, namely symbols of white supremacy. As a major museum exhibition mounted under the auspices of two contemporary art institutions, MONUMENTS will de- and re-contextualize the Confederate monument from the perspective of the present moment, which is to say in the wake of recent white supremacist extremeism. In addition to contextualizing the monuments socially, historically and art historically, the exhibition will squarely critique and confront the Lost Cause, framing it as the intentional rewriting of history which has acted as a highly effective propaganda campaign. Recognizing this exhibition as a robust educational and outreach opportunity, MOCA's staff will prepare an abundance of on-site educational

# LAXART

materials for a general public including K-12 and college students. The exhibition will also be accompanied by a substantial scholarly publication and a year-long series of public programs including panels, screenings, lectures, and readings.

The decommissioning of Confederate monuments is an historic moment and the citizens of Charlottesville have been made painfully aware of the depths to which this terrain is contested. Confederate monuments such as the Robert E. Lee and Stonewall Jackson statues that the City of Charlottesville bravely removed, represent the Lost Cause, a mythology portraying Confederate soldiers as having fought for timeless ideals transcending the true cause of the Civil War, namely slavery. Crafted immediately after the war, the Lost Cause narrative had already supplanted history before its agents were cast in bronze. While the statues portraying Confederate soldiers as solemn heroes also served to obscure history further, as bronze monuments, they would continue to do so implacably, publicly, and in perpetuity. Generations later, many Americans, unable to see Confederate statues for the myths they truly portray, instead refer to them as "history."

This is a serious problem for they are anything but history. The legacy of slavery and Jim Crow is reflected in a myriad of statistics; voting rights struggles continue; and white supremacy is alive and well. Accordingly, the past can hardly be said to be past. At worst, Confederate statues are openly enshrined by white supremacists. At their most benign, they are a form of denial. In any case, under their auspices, we are unable to move past history because we are unable to acknowledge the facts of the matter. And the facts are simple: 1) the system of slavery was an inhumane and morally repugnant practice; 2) the Civil War was fought over slavery; 3) the Confederacy and its army fought to maintain a system that was inhumane and morally repugnant. Our social and moral progress as a country will continue to be hindered as long as individuals can avoid acknowledging facts. Again, out of sight, out of mind is not enough.

LAXART applauds the actions taken by the Charlottesville City Council and wants to further support them through this offer. While other municipalities are simply

# LAXART

putting their statues in storage, Charlottesville is taking a more bold and proactive stance. Having been deposed, they need to be “recontextualized” and understood in no uncertain terms as relics of the Lost Cause. These statues, however, have been on view for upward of a century. During that time, the Lost Cause has made major inroads into the collective imagination and discourse. Rather than a means of merely understanding the Lost Cause, we believe these statues need to be transformed wholesale as a means of combating and actively dismantling Lost Cause ideology. While there are plenty of statues suited for understanding the Lost Cause, there are no statues better suited for a symbolic transformation than Charlottesville’s Lee and Jackson bronzes. As a response to an unprecedented situation of historical magnitude, transformation is the most definitive way to “clearly and unambiguously” reject Jim Crow era narratives associated with these statues. Toward that end, this offer entails giving the statues, one each to two nationally recognized artists, Kara Walker and William Pope.L both of whom were selected for the manner their work engages history and its legacies.

We ask that the Charlottesville City Council consider donating the Robert E. Lee and Stonewall Jackson to LAXART for nominal consideration. LAXART is a charitable, non-profit entity with tax exempt 501 C3 status, eligible to receive donations of property under the provisions of Virginia Code 15.2-953. We are a non-commercial art gallery whose mission is to promote developments in contemporary culture through exhibitions, publications, and public programs. Founded in 2005 as an alternative platform for emerging and under-recognized talent, LAXART has expanded its mission to encompass thematic group exhibitions with the belief that contemporary art is a means of understanding key issues of our time.

We have secured major funding from the [Emily Hall Tremain Foundation](#), the [Andy Warhol Foundation](#), and the [Getty Foundation](#). We likewise anticipate equally significant funding from the [Ford](#) and [Mellon Foundations](#). A portion of our funding has been earmarked for municipalities who, while wishing to participate, might need

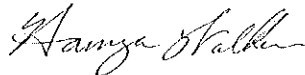
# LAXART

financial assistance dismantling their monument. **Toward that end, LAXART is willing to reimburse the City of Charlottesville \$100,000 against its dismantling costs.**

This is in addition to paying transportation and storage costs we would incur between the time of the monuments' deposition and their display in Los Angeles.

The remainder of the proposal includes more background on the context of Charlottesville's monuments, the exhibition and recontextualization plan, and logistics. Should you have questions or need more information, we are at the City Council's disposal. I cannot underscore enough how important the Charlottesville monuments are to the success of the exhibition. Thank you for your consideration of this request. I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script that reads "Hamza Walker".

Hamza Walker

Director, LAXART

# LAXART

## LAXART Official Offer

Please accept the following document as an official offer of acquisition for the sculptures and accompanying pedestals of Confederate Generals Robert E. Lee by Henry Shrady and Leo Lentelli and Jonathan "Stonewall" Jackson by Charles Keck owned by the City of Charlottesville on behalf of LAXART. LAXART is eligible to receive donations of property under Virginia Code 15.2-953, Article B, Section ix as a 501(c)3 non profit recreational organization (see documentation attached). This offer shall be valid for one hundred and twenty (120) days from the date of receipt. The following individuals are authorized to negotiate on behalf of LAXART:

Hamza Walker - Executive Director - [hamza@laxart.org](mailto:hamza@laxart.org) - (323) 871-4140

Margaret Morgan - Board Chair - [margaret.morgan@gmail.com](mailto:margaret.morgan@gmail.com) - (213) 880-5601

## Historical Background

### The Lost Cause

The Confederate monuments in front of courthouses and capitol buildings are physical manifestations of the Lost Cause mythology. Formed in the wake of the Civil War, the Lost Cause contends that the South's secession from the Union and the ensuing bloodshed was not about slavery. Rather, the "War Between the States" or "War of Northern Aggression" was courageously fought to defend states' rights from a tyrannical federal government in spite of the overwhelming odds. Though they were outnumbered, the Southern armies were led by the most honorable and brilliant generals and consisted of valiant men protecting their wives, children, property, and the Southern way of life. In this ideology, chattel slavery was a civilizing force through which Africans and their descendents were provided with everything they needed thanks to the benevolence of their enslaver. The Lost Cause willfully ignores the brutality of slavery and the dehumanization inherent in the institution, regardless of the personality or predilections of the enslaver, and posits white southerners as victims.

# LAXART

Predicated on the fallacy of white supremacy and inferiority of African Americans, this view of the antebellum South, Civil War and Reconstruction calcified in the decades following the war and justified Jim Crow era policies which maintained that Black people were unfit to govern or vote. These falsehoods were passed down from generation to generation of white southerners through an intentional and wildly successful propaganda campaign carried out by mothers, educators, legislators, and heritage groups. Despite the words of Confederate leaders themselves and decades of historical scholarship refuting all major claims of the Lost Cause, it continues to maintain a tight grip on many Americans' understanding of the past. The Lost Cause is anything but an historical phenomenon. The impact of chattel slavery and Black disenfranchisement on contemporary society has resulted in a chasm of racial disparity between white and Black Americans in nearly every facet of life, including but not limited to housing, health care, economic opportunity, life expectancy, political representation, and education. Without being able to properly identify and address the roots of these disparities, they will continue to grow. The current battle over how American history is taught exemplifies the urgency with which the Lost Cause must be confronted, disrupted, and replaced with a more inclusive, thorough, and complete understanding of American history.

## Monumental impulse

As the Reconstruction era came to a close in the 1870's with the withdrawal of federal troops and the "redemption" of the southern states, Confederate monuments began to rise. The earliest monuments were erected in cemeteries in the years immediately following the war and embraced Victorian-era mourning iconography such as laurel wreaths, urns, and drapery. They could be interpreted as an attempt to cope with the devastation wrought by the war through a funerary impulse; an estimated 20% of the white southern male population had died in the course of four years.

In the 1890's, Jim Crow laws were being codified in state constitutions across the



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South, lynchings were horrifyingly commonplace, and Confederate monuments were being built in more public spaces such as courthouses, town squares, and state capitol grounds. In this period, the monument builders were the daughters of Confederate veterans who often did not have personal recollections of the war and many felt robbed of their birthright - the "Old South" way of life as romanticized in countless novels and films like *Gone With the Wind*. These later monuments included inscriptions with language that was laudatory rather than mournful, praising the righteousness of the Confederate cause, omitting any reference to slavery. A far cry from the somber obelisk form, these late 19th and 20th century monuments depicted citizen soldiers doing their civic duty, stately generals gallantly leading the charge, and faithful wives and mothers sacrificing their husbands and sons to the war effort. Monument building offered a political outlet for elite white women to lay claim to public space, providing clear examples of (white) Southern manhood, femininity, and citizenship.

## Paul Goodloe McIntire

Paul Goodloe McIntire is the archetypal Confederate monument funder - he was born in 1860 and experienced the war and Reconstruction as a child. His family had owned both land and enslaved people but by 1870 they had lost  $\frac{2}{3}$  of their wealth. After leaving the South and amassing his own fortune in the North, he returned to his hometown of Charlottesville. In 20th century progressive fashion, McIntire was a proponent of the City Beautiful movement which inscribed civic values on public space, often imposing paternalistic ideas about citizenship and culture onto an increasingly diverse population. He donated land, money, and art, including the Robert E. Lee and Stonewall Jackson monuments, to the city. Reflected in these gifts are his ideas about the proper social order. In 1918, McIntire deeded land for two parks to house commissioned statues of Robert E. Lee and Stonewall Jackson; Black residents implicitly understood these parks to be "whites only". In 1926, McIntire gave land for three additional parks which included specific racial covenants in their deeds - two of

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these parks were for white residents and one was for Black residents. Segregation was intrinsic in these gifts.

Lee and Jackson are literally placed on pedestals, unquestioningly presented as heroic figures worthy of reverence. There is no mention that both men enslaved other human beings nor is it clear that the nation for which they fought was one that permanently inscribed chattel slavery in its founding document. They were commissioned and erected during a period of nationwide growth of the Ku Klux Klan and the Eugenics movement and amidst local events including minstrel shows, cross burnings, and attempted lynchings.

## Stonewall Jackson

Confederate General Thomas “Stonewall” Jackson had attended West Point and served in the Mexican-American war before working as a decidedly unpopular professor at the Virginia Military Institute. During the Civil War, he became an instant celebrity in the South due to his successes in early battles, most notably at Manassas. When Jackson died at the Battle of Chancellorsville in 1863, he immediately became a martyr to the Confederacy and some proponents of the Lost Cause posit that if Jackson had not died, the South would have won the war.

Charles Keck was a well known artist at the time of McIntire's commission who trained at the National Academy of Design and the American Academy in Rome and worked as a studio assistant for Augustus Saint Gauden. As was the case for most 19th century classically trained sculptors, many of the commissions available to him were for large scale public monuments. Keck completed monuments of both Union and Confederate figures but his depiction of Jackson is considered one of the finest equestrian monuments of the period. In his depiction in Charlottesville, Jackson is shown charging into battle with a look of determination and his horse's musculature is finely articulated. The base of the monument includes allegorical figures of “Faith” and

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“Valor”, alluding to the Lost Cause tenets often attributed to Confederate soldiers. The monument was commissioned specifically for Jackson park, which was built on land adjacent to the courthouse that was seized by the County government from Black home and business owners, claiming that the area was blighted. This park and accompanying monument literally commemorate the Lost Cause at the expense of Black progress.

## Robert E. Lee

Though Lee was a competent tactician in many ways, his reputation was inflated in the years following the war, thanks to the efforts of men who served under him in the Army of Northern Virginia. Organizations like the Southern Historical Society and the United Confederate Veterans published recollections of the war that glorified Lee's actions and repudiated any criticisms of him as biased and unfair. They also downplayed his participation in and reliance on chattel slavery, despite his stated belief that slavery was necessary to civilize Black people. By the early 20th century, Lee had been elevated to mythical status as a righteous Christian warrior who hated slavery and whose brilliance could not overcome the resources and manpower of the Union army. This transformation from traitor to national treasure can be seen in President Franklin Delano Roosevelt's remarks at the unveiling of a Lee statue in Dallas in 1936 - "All over the United States of America we regard him as a great leader of men and a great General, but also... something even more important than that. We recognize Robert E. Lee as one of the greatest American Christians and one of our greatest American gentlemen."<sup>1</sup>

The Charlottesville monument of Robert E. Lee is much more static in composition and tone than that of Jackson, due in part to the turbulent nature of the work's creation. Henry Mervin Shrady was a self-taught member of the National

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<sup>1</sup> Dallas Morning News, June 13, 1936, p. 8.

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Sculpture Society who had been recommended to McIntire by the preeminent artist Daniel Chester French. Shrady would be best known, ironically, for his monument to Ulysses S. Grant on the Capitol grounds. However, upon receiving McIntire's commission, Northern born Shrady stated "I am going to make this the best thing I ever did, as I am a great admirer of Gen. Lee". Shrady was chronically ill and died before he was able to complete the Lee statue. Leo Lentelli, an Italian sculptor working in New York and San Francisco, was hired to complete the monument. However, Shrady's clay model had dried out and Lentelli had to start from scratch, giving Lee and his horse a much more solemn and stern appearance. The master of ceremonies for the monument unveiling in 1924 wrote "In afternoon walked with Mary to look at the Lee Statue, which has just been set up. I do not like it all".<sup>2</sup>

In the months leading up to the unveiling of the Lee monument in 1924, the Jefferson Theater screened Lost Cause paragon *Birth of a Nation*, The Racial Integrity Act and the Eugenical Sterilization Act were signed into law, and the Klan held lectures and burned crosses.

## The Statues in the 21st Century

The more recent events in the lifespan of the Statues provide a typical, though perhaps extreme and highly publicized case study of the various stakeholders invested in the future of Confederate and other racist monuments.

Since Confederate monuments have been built, Black communities have understood the implicit message in their placement in public space. Zayahna Bryant's petition and subsequent organizing beginning in the Spring of 2016 exemplifies how the political mobilization of Black activists are often the catalysts for removal. After inspiring larger communities of people to put pressure on municipal governments to respond, their stories often fade into the background, with public congratulations often going

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<sup>2</sup> Blue Ribbon Commission. Appendix C(a), p. 50.

# LAXART

solely to city officials. It is imperative that people like Bryant in Charlottesville, [Tami Sawyer](#) in Memphis, [Quess](#) and [Sue Mobely](#) in New Orleans, and [Camille Bennett](#) in Florence, are given their full due.

The events during the “Summer of Hate” and the continued presence of armed neo-Confederates in the parks where the statues stood are evidence of the power these inanimate objects continue to have. The backlash to City Council’s 2017 decision to remove the statues is nothing new. It is the same confluence of fear, anger, and resentment towards Black progress, construed as white victimization, that was seen following Reconstruction with the establishment of Jim Crow and during the Civil Rights era with the Massive Resistance movement. The impulse to rally around Robert E. Lee with tiki torches is the same impulse that saw Confederate monuments proliferate across the nation. Confederate monuments act as vessels where battles over abstract concepts like race and power can manifest in a physical landscape. In protecting the statues, they are protecting white people’s prominence, claim to public space, and control of historical memory.

The silver lining to the violence of the Unite the Right rally is that Confederate monuments have been unmasked. The national discussion about these objects has shifted from a debate about culture and heritage to one about white supremacy and anti-Blackness. They have been further connected to the legacies of slavery embedded in contemporary American society and specifically identified as a form of social control. While it is upsetting that it takes such a deadly shock to the system to bring these complex and painful conversations to the forefront, the pervasiveness of white supremacy is blinding.

## Removal

After legislators amended Virginia’s monument protection law and the state supreme court dissolved the injunction keeping Charlottesville’s monuments in place,

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City Council's immediate action to remove the monuments completes a circuit. Municipal action to remove racist monuments provides a state sanctioned refusal of white supremacy. Though the removal of symbols is not a panacea for racial disparity, this intentional process of disposition ensures that the Lost Cause cannot regain lost ground. It is an opportunity for Charlottesville to act as the model for how municipalities can engage with their painful history and transform a source of shame into a source for healing. We hope that LAXART and MONUMENTS can help facilitate this process.

## **Recontextualization Plan**

### The Exhibition

Following the actions of white supremacist terrorists in Charleston in 2015 and in Charlottesville in 2017 as well as Bree Newsome's defiant climb to the top of a flagpole at the South Carolina Statehouse to remove the Confederate battle flag, dozens of monuments were removed and schools and streets were renamed across the South. By 2018, the debate sparked by the removal of these Confederate symbols led to the conception of MONUMENTS. The murder of George Floyd has people further questioning the meaning of these symbols. In a [June 2020 poll](#) by Quinnipiac University, 52% of voters support removing Confederate monuments from public spaces, up 19 points from August 2017. This shift in the national discourse has enabled us to greatly expand the scope of the exhibition to encompass reparations and national healing.

We have selected a group of decommissioned Civil War monuments from throughout the United States that we will put on display alongside works of contemporary art. To date, we have confirmed loans from the municipalities of Baltimore, Manatee County, Florida, Pittsburgh, and Charleston, South Carolina, as well as institutions including Randolph College and the Houston Museum of African American Culture. Through a selection of new commissions and existing works by artists such as [Ja'Tovia Gary](#), [Torkwase Dyson](#), [Abigail Deville](#), [Natalie Ball](#), [Devóne](#)

# LAXART

[Tines](#), and [Leonardo Drew](#), MONUMENTS will confront and challenge long held beliefs about the real people behind these inanimate objects and the ways in which we can build a roadmap forward.

In exhibiting a variety of monuments in an indoor gallery space, we will question the geographically specific context for these statues as well as the role they play in discussions about race, gender, and American history. How does collective memory differ from history and how should we decide who and what is worth celebrating, especially as public values change over time? What could “Reconstruction 2.0” look like, and how would it avoid the failures of the first? What would a true reckoning with history look like in America?

Though Los Angeles may seem an odd location for an exhibition about a largely Southern phenomenon, we are in a unique position to host this important conversation. California has its own history with the Confederacy and its memorialization. The Los Angeles Mounted Rifles were raised as a militia group to travel east and fight for the Confederacy, Confederate heritage groups were active due a great number of Southerners settled here following the war, and perhaps the most influential of all Confederate monuments, *Birth of a Nation*, was made just miles from LAXART's front door. More recently, members of the Southern California based white supremacist group, the Rise Above Movement, attended the Unite the Right Rally in 2017 and the final Confederate monument in the state was removed from a Santa Ana cemetery in 2019. While nowhere in America is truly exempt from the legacy of the Civil War, we have geographic distance from the *epicenter* of these metaphorical and physical battlegrounds that allow us to provide an aerial view of an issue that is simultaneously national and hyper local in nature.

Our goal is to show that each of these objects has its own life, specific to the community in which it is situated. The framing provided by a museum setting will acknowledge the real power inherent in Confederate monuments while also removing them from their intended context, rendering them as objects worthy of study rather than

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reverence. A frequent argument against removing monuments from public space claims that doing so is “erasing history”; we intend to do quite the opposite. By examining these objects in their entirety, with historical depth and nuance, we can focus on how they impact our lives today.

## The Venue

MOCA is a natural partner for LAXART in MONUMENTS. Throughout its over forty year history, MOCA has consistently staged exhibitions that challenge the limits of contemporary art and critically engage with relevant topics of our time, often doing both simultaneously. As an institution that specializes in art made after 1940, it not only works to preserve the existing collection and provide new scholarship in the field. MOCA also focuses on the future, fostering emerging and mid-career artists through support for new works and partnerships with other arts institutions such as [The Underground Museum](#).

Though the art world can feel frivolous and elitist to many, MOCA has widened the scope of what is valued as “art” by including a vast array of media and types of creators in its collection and exhibitions. MOCA’s allocation of significant resources to interpretation, programming, and education for visitors of all ages engenders a sense of belonging for non-traditional museum audiences; the recent shift to free admission evidences this dedication to accessibility for all. This environment is crucial for the presentation of difficult works and topics such as those to be included in MONUMENTS. Additionally, the Geffen gallery space, formerly a hardware store and police car warehouse, can physically accommodate the weight and size of large scale objects in a climate controlled environment.

The conversation about memorialization and historical memory is national. Current debates in state legislatures and school board meetings across the country about how history is taught highlight the relevance of MONUMENTS. As such,



# LAXART

MONUMENTS will travel to other institutions strategically located throughout the country. These include the Nasher Sculpture Center in Dallas; the Crystal Bridges Museum of American Art in Bentonville, Arkansas; MASS MoCA in North Adams Massachusetts; and the Baltimore Museum of Art to name a few. The exhibition can be reconfigured to fit a variety of audiences, spaces, and localities. However, the Charlottesville monuments would remain central. Should the City Council transfer ownership of these monuments to LAXART, Charlottesville will again find itself on the national stage, this time under the auspices of transformation rather than tragedy.

## Programming & Publication

The questions addressed in the galleries will serve as the basis for a robust series of public programming featuring contributions from art historians, politicians, journalists, poets, historians, artists, and activists. These talks, performances, and workshops will provide opportunities to explore the themes of the exhibition in all their complexities and nuance. Experts from a variety of disciplines beyond art and history - philosophers, political scientists, archeologists, geographers, and sociologists - can offer new and additional frameworks through which we can build greater understanding of the historical and contemporary context for these objects.

Because MONUMENTS as a physical exhibition is ultimately temporary, it is paramount that it is documented and archived in a meaningful, lasting, and accessible way. Part scholarly text, part 'zine, the MONUMENTS publication will provide even deeper engagement with the history and context of monuments, white supremacy, American legacies of slavery, and the current political moment. Case studies of individual monuments written from the perspective of activists, politicians, and historians will showcase the local specificity of these objects and how the communities in which they are situated affect their creation, protest, and removal. Photo spreads documenting events like the Black Lives Matter protests of the summer of 2020, pop cultural uses of

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the Confederate battle flag, and the presence of Confederate iconography at the January 6 attempted coup will provide insight into the cultural space the Lost Cause and anti-Black racism occupies. Academic essays from art historians will critically situate both the monuments and the contemporary works in the exhibition into a larger framework of an American art tradition.

## Acquisition of the Statues

LAXART taking ownership of Charlottesville's statues will offer a unique opportunity to engage with the themes of the exhibition. Other municipalities and institutions are temporarily loaning statues that will have to be returned in their original state. Under those circumstances, artists cannot physically engage with the objects. In the case of the Charlottesville Lee and Jackson, we will give them to contemporary artists who will use these monuments as material to create a new work. Rather than reinstalling Lee and Jackson on a battlefield or golf course where they will retain their power as symbols of the Lost Cause, they can be examined in full, within their historical and art historical context. As such, they will be wholly reinterpreted and recast into symbols of our current moment. In their new form, they can embody the change that has occurred since their creation in the early 20th century as well as a vision for a more just future.

While it is tempting to entertain the notion of destroying these works entirely, it is crucial that the Lost Cause be discredited but never forgotten. To do so would discount the lived experiences of generations of African Americans who have endured the legacy of slavery and the continued impact of white supremacy. It cannot and should not be swept under the rug. Charlottesville's participation in MONUMENTS offers an opportunity for a restorative approach that simultaneously confronts the past and embraces the future. The simultaneous expansiveness and immediacy of visual art holds a power that words alone cannot. We breathe individual meaning into a work

# LAXART

based upon our lived experiences and knowledge base, teasing out comparisons and associations that may require us to confront our beliefs and ask ourselves “why do I think that?”. Art draws connections, encourages creative thinking, and brings hope and joy into our lives. It is a severely underutilized tool in answering challenging questions. These monuments speak a visual language and therefore must also be confronted in that same language.

Inviting artists, Kara Walker and William Pope.L, to transform two of the Lost Cause narrative's most potent symbols addresses that challenge head on. Taking ownership of the Charlottesville monuments is therefore integral to the goals of the exhibition. Having artists transform Lee and Jackson into new works to be featured in a major exhibition would place the city of Charlottesville at the forefront of a discussion in sore need of examples of how we might constructively engage these objects so as to heal and grow as a nation.

## Kara Walker

Kara Walker gained notoriety in the mid 1990s with her life-sized, paper silhouette vignettes. As black paper cut outs adhered directly to the white walls of the gallery, the work is put forth in no uncertain terms. Her world was quite frankly black and white. Shameless in fact. The work's refusal to acknowledge shame when dealing with issues of race and desire set within the context of slavery, allowed Walker to challenge, indeed taunt, our individual and collective historical imaginations. From successive generations of African Americans, the issue as to how to come to terms with a painful past persists. How does one write oneself into a painful history without first inquiring into the human capacity for lust, disgust, and violence? And if one is African-American, as is Walker, where does one begin this task amidst the pickaninnies, sambos, mammies, mandingos and mulatto slave mistresses depicted on sought after flotsam and jetsam hiding in the back of antique stores, bric-a-brac that goes by the name of bygone Americana? As bizarre, beautiful, or violent as her imagery may be, Walker understands

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that an historical imagination is a prerequisite for genuine ownership of the past. And if the task of writing oneself into history is conducted at the level of what it means to be human, then this task must take into account pain, parody, pleasure, poetry and ultimately the perverse.

Although her cut-outs have been likened to the literature of Toni Morrison and Alice Walker, Kara Walker's work actually shares more in common with dime-store historical romances that use the ante-bellum as a backdrop. With human chattel as part of the historical mise-en-scene, it begs to be asked to what extent a romance could follow conventions of decency before the specter of perverse power relations would come into play. For Walker, this extent certainly is not great. Her vignettes are designed to upstage the entire genre. Her vision is a skewed triad of race, history and desire, that when it avails itself to a reading, avails itself to one of such surreal and psychological dimension that perhaps it is better to call it a diagnosis à la Sigmund Freud. Walker's work is shameless three times over. In her choice of imagery, she has abandoned the bodily shame regarding sex, historical shame surrounding slavery, and the social shame surrounding stereotypes.

During the spring of 2014, Walker's first large scale public project, a monumental installation entitled *A Subtlety: Or... the Marvelous Sugar Baby an Homage to the unpaid and overworked Artisans who have refined our Sweet tastes from the cane fields to the Kitchens of the New World on the Occasion of the demolition of the Domino Sugar Refining Plant*, was on view at the abandoned Domino Sugar refinery in Williamsburg, Brooklyn. Commissioned and presented by Creative Time, the project – a massive sugar covered sphinx-like sculpture – responded to and reflected on the troubled history of sugar. In 2018, Walker completed a large-scale public commission for Prospect 4 in New Orleans. The *Katastwóf Karavan* is a calliope, a steam-powered pipe organ housed in a parade wagon. Drawing on the calliope's associations with nineteenth-century New Orleans riverboats as well as the steam engine and other Industrial Revolution-era inventions like the cotton gin, the work's layered references

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reveal connections between the history of the city's cultural landscape and slavery in the American South. She conceived the caravan, with her signature silhouette imagery, in response to the inadequacy of a memorial plaque at Algiers Point, identifying a former holding site on the Mississippi River where enslaved Africans were abused and quarantined before transportation to slave markets across the river. Titled to incorporate the Haitian Creole word that in English translates to "catastrophe," *Katastwóf Karavan* interrogates the way in which these dehumanizing and violent experiences have been historicized and under examined.

## William.Pope.L

William Pope.L forged an artistic practice that has nothing yet everything to do with race. It is best to say that Pope.L's work has to do with figuration in an attempt to understand the self, a crucial part of which, for better or worse, is the concept of race. For over fifteen years, the artist has proclaimed to be "The Friendliest Black Artist in America," and has worked in all media, (performance, video, painting, sculpture, drawing, assemblage, installation). Despite what this title implies, Pope.L's work does anything but address audiences on comfortable or comforting terms. A quizzical mixture of anger, abjection, humor, and urgency, the work uses binaries, contraries and preconceived notions embedded within contemporary culture to create art works in various formats, for example, writing, painting, performance, installation, video and sculpture. Building upon his long history of enacting arduous, provocative, absurdist performances and interventions in public spaces, Pope.L applies some of the same social, formal and performative strategies to his interests in language, system, gender, race and community.

For Black artists engaged with performance, this presence marked the appearance of a Black subject with a sense of identity secured through Black nationalism and an attendant sense of cultural self-determination. "Say it loud. I'm Black and I'm proud!" But under postmodern auspices, the assertion of identity was to be met

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with a countervailing critique whose immediate goal was twofold: first, the deconstruction of stereotypes both old and new, which involved critiquing representations of Blacks; and second, to resist the collapsing of history into biology or culture into nature, a collapse synonymous with constructing essentialist notions of self. For Black artists already stricken with a Du Boisian double consciousness (“the sense of always looking at one’s self through the eyes of others”), the simultaneous assertion and critique of identity amounted to a double consciousness squared. If Pope.L’s work is any indication, this space is far less rational than it sounds, one comprised of requisite negotiations and negation, reprisals and reappraisals, cancellations and collapse.

Pope.L took up performance as an under-graduate. Part of the reason was simple: “I wanted to extend my practice into arenas where I would have more contact with people.” Dating between 1978 and 1980, his earliest performances took place on New York City streets. These include the now iconic *Crawl* works, for which the artist drags himself belly-down up the Bowery and across the city, and *Thunderbird Immolation*, in which Pope.L, after dousing himself with a pint of Thunderbird wine, sits in lotus position on a yellow blanket surrounded by a circle of stick matches. The latter act would have looked to passersby like a protest modeled on that of Thich Quang Duc, the Vietnamese Buddhist monk who, in 1963, set himself aflame in protest of religious persecution at the hands of the U.S.-backed Diem regime. But the Vietnam War having come to a close, what and on whose behalf was Pope.L protesting? A show of solidarity with winos perhaps? In any case, *Thunderbird Immolation* exemplifies Pope.L’s logic, which relates less to reason and much more to the riddle, making it a sensibility perfectly suited to take up that most challenging of topics: race.

Pope.L is also no stranger to the large scale physical work. *Choir* (2019-2020), presented at the Whitney Museum of American Art, was a continuation of the artist’s exploration of water. Specifically referencing the political (Flint’s water crisis), the historical (Jim Crow era segregated water fountains), and the art historical (Duchamp’s

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*Fountain*), *Choir* circulates water through its contraption such that it meditates on the lack of access to a basic necessity for Black Americans. According to Pope.L, "Race is a puzzle. And this puzzle is dependent upon a figuration that cannot be 'seen' but only responded to and instrumentalized against for it is felt more than understood." Indeed, psychologically speaking, race is a colored affair. But insofar as race may be reduced to a visual phenomenon, the body signifies through its mere appearance. It is always already spoken for.

## After the Exhibition

The significance of the two works created by Kara Walker and Pope.L from the disposed Lee and Jackson statues cannot be understated. Not only will they be noteworthy as the first disposed monuments to be reused in an innovative way, they will be seminal works of art by two of the most prominent contemporary artists of this moment. Following the run of MONUMENTS, including the duration of travel to other locations, the transformed statues will be acquired by a major American museum. We are currently in talks with the Smithsonian National Museum of African American History and Culture (NMAAHC) in Washington, D.C. and Crystal Bridges in Bentonville, Arkansas. Both of these institutions are well equipped, financially and intellectually, to interpret these new works of art in regards to race, American history, and art.

## Logistics

### Donation Eligibility and Fair Market Value

In our understanding, LAXART is eligible to receive donations of property under Virginia Code 15.2-953, Article B, Section ix as a 501(c)3 non profit recreational organization (see documentation attached). Despite this, we would like to help alleviate the costs incurred from the removal of the monuments from public view in July 2021. As such, LAXART is prepared to reimburse the City of Charlottesville \$100,000.

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Monetary value is assigned to a fine art object based, in part, upon the artist, subject matter, medium, and quality. We could look at recent sales of works by Keck, Shrady, and Lentelli at auction, however there is nothing of the same scale as the monuments to which they can be compared. In 2016, the director of Conner-Rosenkranz, a Manhattan art gallery specializing in sculpture, was quoted as saying "As public sculptures [monumental sculptures] never trade and there is no consistent market". Their size and weight necessitate highly specialized facilities that can house such objects and as the city is aware, the cost of moving them is prohibitively expensive. Even if the artistic quality of the monuments is high, which for the Shrady/Lentelli Lee is arguably not, or the prominence and skill of the artist is great, the unwieldiness of such large scale sculptures makes them difficult to consistently sell.

Further, because these statues take Confederate generals as their subject and were created to be site specific public works, they exist in a liminal space; part art object, part historical artifact. Because they are so thoroughly associated with white supremacy and the marginalization of Black Americans, they no longer hold the same value in a fine art market, regardless of the prominence of their makers. Though there will always be a market for historical artifacts, selling Lee and Jackson to the highest bidder seems antithetical to the City Council's stated and commendable intention of finding a home for these objects that do not continue to glorify the Lost Cause. The same individuals and organizations who believe that Lee and Jackson are men of high esteem worthy of being enshrined in bronze, despite their views of Black people and slavery, are likely proponents of the Lost Cause and unlikely to put these objects in their proper context. This gets to the heart of the issue of Confederate monuments and why they are so contentious - who do we as a society deem important and worth honoring?

The \$100,000 offered to the city by LAXART is expressly for the removal costs. Paying for such objects is tantamount to assigning them value which we do not believe they have.



# LAXART

## Funds

All costs for the monuments transfer and transformation will be paid for by LAXART with funds from significant private donations as well as grants we have received from the Emily Hall Tremaine Foundation, the Getty Foundation, and the Warhol Foundation. We anticipate additional funding from the Mellon Foundation, the Ford Foundation, the National Endowment for the Arts, and other arts funding foundations. MOCA and other institutions that will host MONUMENTS will also dedicate a portion of their budgets to the transport, installation, interpretation, and security of the Walker and Pope.L works made from Charlottesville's statues.

## Transfer of Ownership

All shipping and transport costs associated with moving the monuments from Charlottesville to Los Angeles will be covered entirely by LAXART. We have contracted with [Methods & Materials, Inc.](#), a professional art handling company based out of Chicago that specializes in rigging, transport, installation, and de-installation of large sculptural works. Upon acceptance of our proposal, we would arrange for a contact from Methods & Materials to coordinate pick up of the monuments via truck with city employees as soon as is logistically feasible. Walker and Pope.L will be provided with secure and appropriate space in which to work with the statues as material in New York and Chicago respectively. Upon completion of the new works, Methods & Materials will store the Walker and Pope.L works in a secure facility until they are shipped to Los Angeles for installation at MOCA in 2023.

# LAXART

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INTERNAL REVENUE SERVICES  
P. O. BOX 3508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: NOV 07 2005

LAXART  
C/O ARTHUR RIEMAN  
4148 SHADYGLADE AVE  
STUDIO CITY, CA 91604 0000

Employer Identification Number:  
20-2911916  
DLN:  
17053209007045  
Contact Person:  
SHERRY Q WAN ID# 31052  
Contact Telephone Number:  
(877) 829-5500  
Accounting Period Ending:  
December 31  
Public Charity Status:  
170(b)(1)(A)(vi)  
Form 990 Required:  
Yes  
Effective Date of Exemption:  
May 20, 2005  
Contribution Deductibility:  
Yes  
Advance Ruling Ending Date:  
December 31, 2009

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. During your advance ruling period, you will be treated as a public charity. Your advance ruling period begins with the effective date of your exemption and ends with advance ruling ending date shown in the heading of the letter.

Shortly before the end of your advance ruling period, we will send you Form 8734, Support Schedule for Advance Ruling Period. You will have 90 days after the end of your advance ruling period to return the completed form. We will then notify you, in writing, about your public charity status.

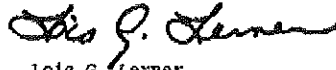
Please see enclosed information for Exempt Organizations Under Section 501(c)(3) for some helpful information about your responsibilities as an exempt organization.

Letter 1045 (DO/CG)

LAKART

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,



Lola G. Lerner  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures: Information for Organizations Exempt Under Section 501(c)(3)

Letter 1045 (00/00)

**Amended and Restated Bylaws of  
LAXART  
a California Nonprofit Public Benefit Corporation**

**ARTICLE 1  
NAME**

1.1. NAME

The name of this corporation is LAXART.

**ARTICLE 2  
OFFICES**

2.1. PRINCIPAL OFFICE

The corporation shall have a principal office at which it shall maintain its official records and transact other business. The principal office shall be located at a place as determined by the Board of Directors in the State of California.

2.2. OTHER OFFICES

The corporation may also have other offices in and outside of California as the board of directors may determine.

**ARTICLE 3  
PURPOSES; DEDICATION OF ASSETS**

3.1. PURPOSES

The primary purposes of this corporation shall be to promote and support the production and exhibition of, discussion about, and interaction with, international, interdisciplinary, and intergenerational artistic practices, and to carry on other education activities associated with this purpose as allowed by law. This corporation is organized exclusively for charitable and educational purposes within the meaning of Internal Revenue Code §501(c)(3).

3.2. DEDICATION OF ASSETS

The properties and assets of this nonprofit Corporation are irrevocably dedicated to the purposes set forth in Section 3.1 of this Article 3. No part of the net earnings, properties, or assets of this Corporation, on dissolution or otherwise, shall inure to the benefit of any private person or individual, or any Director or Officer of this Corporation. On liquidation or dissolution, all properties and assets remaining after payment, or provision for payment, of all debts and liabilities of this Corporation shall be distributed to one or more nonprofit funds, foundations, or corporations which are organized and operated exclusively for charitable or educational purposes and which have established their tax-exempt status under Internal Revenue Code §501(c)(3), and to the extent feasible, and to the extent required for any assets held in trust for such purpose, to such an organization or organizations organized and operated exclusively for educational purposes within the meaning of Internal Revenue Code §501(c)(3).

## ARTICLE 4 DIRECTORS

### 4.1. POWERS

The corporation shall have a Board of Directors (referred to, in these Bylaws, as the "board"). All of the activities and affairs of the corporation shall be exercised by the board or under its direction. The board, acting collectively, shall exercise responsibility for conducting the activities and affairs of the corporation.

### 4.2. NUMBER

The board shall have no fewer than five (5) directors nor more than thirty (30) directors. The precise number of authorized directors shall be set within these limits by an affirmative vote of a majority of the directors then in office. Until changed by resolution of the board, the authorized number of directors shall be twenty (20).

### 4.3. QUALIFICATION

Any artist or other person who has a substantial presence in the art community and who is over eighteen (18) years of age shall be eligible to be a director of this corporation.

### 4.4. DUTY OF CARE AND LOYALTY

It is the obligation of each director of the corporation to perform his or her duties in good faith, in a manner such director believes to be in the best interests of the corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. This obligation extends to all activities a director performs in that capacity including, without limitation, duties as a member of any committee of the board on which a director may serve.

### 4.5. GENERAL DUTIES

It shall be the duty of the directors to:

- (a) Perform any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation of this corporation, or by these Bylaws;
- (b) Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, prescribe and supervise the duties and fix the compensation, if any, of all officers, agents and employees of the corporation;
- (c) Meet at such times and places as required by these Bylaws; and
- (d) Register their addresses, phone and facsimile numbers, and electronic mail ("e-mail") addresses with the Secretary of the corporation. .

### 4.6. RESTRICTION REGARDING INTERESTED DIRECTORS

Notwithstanding any other provision of these Bylaws, not more than 49 percent of the persons serving on the board may be interested persons. An "interested person" is:

- (a) any person compensated by the Corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise;



(b) any shareholder, employee or officer of any corporation, or partner or employee of any partnership, which has rendered compensated services to the Corporation within the previous twelve (12) months; and

(c) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, mother-in-law, or father-in-law of any person described in (a) or (b) of these Bylaws.

Any violation of the provisions of this Section 4.6 shall not, however, affect the validity or enforceability of any transaction entered into by the Corporation.

#### 4.7. SELF-DEALING

(a). The corporation shall not enter into any contract or transaction with any (1) director of the corporation, (2) officer of the corporation, or (3) corporation, firm, association, or other entity in which one or more of this corporation's directors or officers are directors, directors or have a material financial interest, or in which any of these parties shall be directly or indirectly interested, unless:

(i) The material facts regarding that director's or officer's financial interest in such contract or transaction, or regarding such common directorship, officership, or financial interest, are fully disclosed in good faith and noted in the minutes, or are known to all members of the board, prior to consideration by the board of such contract or transaction; and

(ii) Such contract or transaction is authorized in good faith by a vote of the majority of the board without counting the votes of the interested directors;

(iii) Before authorizing or approving the transaction, the board considers and in good faith decides, after reasonable investigation, that the corporation could not obtain a more advantageous arrangement with reasonable effort under the circumstances; and

(iv) At the time the transaction is entered into (1) the transaction is fair and reasonable to the corporation and (2) the corporation entered into it for its own benefit.

(b) If it is not reasonably practicable to obtain the determination of the board as to the foregoing prior to any such contract being entered into, and such contract is for the benefit of the corporation and in the ordinary course of its business (such as contracts for locations or services for events sponsored by the Corporation), then the Executive Committee, not counting the vote of any interested director, may make the determinations set forth above prior to the contract being entered into, subject to ratification by the board, including a specific finding made in good faith that the standards set forth in clauses (i) – (iv) above were met and that obtaining prior approval by the board was not reasonably practicable, by vote of a majority of the directors then in office, not counting the vote of any interested director, at its next meeting, but in any event prior to consummation of the transaction.)

(c) The provisions of this Section 4.7 do not apply to a transaction which is part of an educational or charitable program of the Corporation if it: (i) is approved or authorized by the Corporation in good faith and without unjustified favoritism; and (ii) results in a benefit to one or more directors or officers or their families because they are in the class of persons intended to be benefited by the educational or charitable program of this Corporation.

(d) The Corporation shall not make any loan of money or property to or guarantee the obligation of any director or officer; provided, however, that the Corporation may advance money to a director or officer of the Corporation for expenses reasonably anticipated to be incurred in the performance of

the duties of such director or officer, provided that in the absence of such advance such director or officer would be entitled to be reimbursed for such expenses by the Corporation.

4.8. COMPENSATION

Directors shall serve without compensation, although they shall be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their regular duties as specified in Section 4.5 of this Article. Directors may be compensated for rendering services to the corporation in any capacity other than director only if such other compensation is reasonable, allowable and has been authorized under the provisions of Section 4.6 and 4.7 of this Article.

4.9. PROHIBITION AGAINST SHARING CORPORATE PROFITS AND ASSETS

No director, officer, employee, or other person connected with this corporation, or any private individual, shall receive at any time any of the net earnings or pecuniary profit from the operations of the corporation, provided, however, that this provision shall not prevent payment to any such person for reasonable compensation for services performed for the corporation in effecting any of its public or charitable purposes, provided that such compensation is otherwise permitted by these Bylaws and is fixed by resolution of the board; and no such person or persons shall be entitled to share in the distribution of, and shall not receive, any of the corporate assets on dissolution of the corporation.

**ARTICLE 5  
MEETINGS OF THE BOARD**

5.1. REGULAR AND ANNUAL MEETINGS

Regular meetings of the directors shall be held a minimum of four (4) times per year at a date and time to be determined by the board. The board will determine by resolution, which may be amended from time to time, which meeting shall be the annual meeting.

At the annual meeting, the board shall undertake the election of directors and officers, as required pursuant to Articles 6 and 8 respectively, and the transaction of other business. Whenever there shall be an election to fill a seat on the board of directors, each director shall cast one vote for each director to be elected. Cumulative voting by directors for the election of directors shall not be permitted. The candidates receiving the highest number of votes up to the number of directors to be elected shall be elected.

5.2. SPECIAL MEETINGS

Special meetings of the board may be called by the Chair of the Board, a Vice Chair of the Board, the Chief Executive Officer or the Secretary, or by any three directors, and such meetings shall be held at the place, within or outside the State of California, designated by the person or persons calling the meeting, or in the absence of such designation, at the principal office of the corporation.

5.3. MINUTES

The Secretary, if present at the meeting, and if not, then another person appointed by the Chair of the Board, or chair of the committee, as applicable, at the meeting for that purpose, shall be responsible for recording and maintaining minutes of the proceedings of the meeting of the board and of committees of the board.

5.4. PLACE OF MEETINGS; ELECTRONIC PARTICIPATION

(a) Meetings of the board shall be held at any place within or outside California that has been designated by resolution of the board or in the notice of the meeting, or if not so designated, at the principal office of the corporation.

(b) Directors may participate in a meeting through use of conference telephone, electronic video screen communication, or similar communications equipment, so long as all of the following apply: (a) each Board member participating in the meeting can communicate with all the other members concurrently; (b) each member is provided the means of participating in all matters before the board, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation; and (c) the corporation adopts and implements means of verifying both of the following: (i) a person communicating by telephone, electronic video equipment, or other communications equipment is a director entitled to participate in the board meeting; and (ii) all statements, questions, actions, or votes were made by that director and not by another person not permitted to participate as a director. Participation in a meeting pursuant to this bylaw shall constitute presence in person at such meeting.

#### 5.5. NOTICE OF MEETINGS

(a) Notices of board meetings are valid if made by:

(1) First-class mail, postage prepaid;

(2) Personal delivery of a written notice;

(3) Delivery by overnight courier or private delivery service that can be and is confirmed;

(4) Telephone, including a voice messaging system or other technology designed to record and communicate messages, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate that notice promptly to the director;

(5) Subject to Section 16.2 of Article 16, electronic mail (e-mail) or other electronic means.

(b) Notice of regular meetings need not be given if fixed by a resolution of the board that is noted in minutes distributed to all directors. Otherwise, notice of regular meetings shall be valid if made no less than fourteen (14) days prior to the date of the meeting. Notice of special meetings shall be valid if made at least forty-eight (48) hours prior to the date and time of the meeting except for notice by mail, which is not valid unless made four (4) days prior to the date of the meetings.

(c) All notices of board meetings shall be given or sent to the director's address, telephone number, fax number or e-mail address as shown on the corporation's records.

(d) Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place of the adjourned meeting are fixed at the meeting adjourned and if such adjourned meeting is held no more than twenty-four (24) hours from the time of the original meeting. Notice shall be given of any adjourned regular or special meeting to directors absent from the original meeting if the adjourned meeting is held more than twenty-four (24) hours from the time of the original meeting.

(e) Notice shall not be given by electronic transmission if the corporation is unable to deliver two consecutive notices to a director by that means, or if the inability to deliver the notice becomes known to the Secretary or other person responsible for giving such notice.

5.6. CONTENTS OF NOTICE

Notice of meetings not herein dispensed with shall specify the place (if other than the corporation's principal office), day and hour of the meeting. The purpose of any meeting of the board need not be specified in the notice.

5.7. WAIVER OF NOTICE AND CONSENT TO HOLDING MEETINGS

(a) Notice of a meeting of the board need not be given to any director who:

(1) Either before or after the meeting, signs

(i) A waiver of notice,

(ii) A written consent to the holding of the meeting, or

(iii) An approval of the minutes of the meeting, or

(2) Attends the meeting and who, before or at the beginning of the meeting, does not protest the lack of proper notice to him or her.

(b) The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

5.8. QUORUM FOR MEETINGS

(a) A majority of the directors then in office shall constitute a quorum for the transaction of any business except adjournment.

(b) If during a meeting at which a quorum was initially present some directors leave, rendering the meeting without a quorum, the board or committee may continue to transact business so long as any action taken or decision made is approved by at least the number of directors required to take action if a quorum were present.

(c) Except as otherwise provided in these Bylaws (including, without limitation, sub-section (b) of this Section), in the corporation's Articles of Incorporation, or by law, no business shall be considered by the board at any meeting at which a quorum, as defined above, is not present. The only motion which is permitted at a meeting at which a quorum is not initially present is a motion to adjourn. A majority of the directors present at such meeting may adjourn from time to time until the time fixed for the next regular meeting of the board.

(d) Regardless of any other provision of these Bylaws, a quorum must consist of no less than one-fifth of the then authorized number of directors.

5.9. MAJORITY ACTION AS BOARD ACTION

The board may take action or make a decision (e.g., pass a resolution) by the affirmative vote of a majority of the directors present at a duly held meeting at which a quorum is present (subject to the more stringent provisions of

these Bylaws or the California Nonprofit Corporation Law including, without limitation, provisions relating to (i) approval of contracts or transactions in which a director has a direct or indirect material financial interest, (ii) approval of certain transactions between corporations having common directorships, (iii) creation of an appointment to committees of the board, and (iv) indemnification of directors).

5.10. CONDUCT OF MEETINGS

Meetings of the board shall be presided over by the Chair of the Board or, in his or her absence, by the Vice Chair of the Board or, in the absence of each of these persons, by a person chosen by a majority of the directors present at the meeting. The Secretary of the corporation shall act as secretary of all meetings of the board, provided that, in his or her absence, the presiding officer shall appoint another person to act as secretary of the meeting.

5.11. ACTION BY UNANIMOUS WRITTEN CONSENT WITHOUT MEETING

Any action required or permitted to be taken by the board may be taken without a meeting if all members of the board individually or collectively (i.e., in one or more identically worded documents) consent in writing to such action and, if subject to Corporations Code §5224(a), the number of directors then in office constitutes a quorum; provided, however, that the consent of any director who has a material financial interest in a transaction to which the corporation is a party and who is an "interested director" as defined in Section 5233 of the Nonprofit Corporation Law (California Corporations Code section 5000 *et seq.*) and Section 4.7 of Article 4 of these Bylaws shall not be required for approval of that transaction. Such action by written consent shall have the same force and effect as any other validly approved action of the board. All such consents shall be filed with the minutes of the proceedings of the board.

**ARTICLE 6  
ELECTION AND REMOVAL OF DIRECTORS**

6.1. ELECTION AND TERM OF OFFICE OF DIRECTORS

The terms of all directors appointed or elected prior to the annual meeting of this corporation shall expire at the time of the next annual meeting. At the annual meeting, the board shall provide for terms of its directors, by designating one (1)- and three (3)-year renewable terms. The initial term (excluding any partial year after the director's appointment or election ((if not at an annual meeting)) and prior to the first annual meeting at which the director is elected) for any director shall be for one year. Following the expiration of the initial designated term, the term of directors subsequently re-elected shall be three (3) years. Directors may thereafter be re-elected for terms of three (3) years without any limit as to the number of terms a director may serve. Directors shall be elected at each annual meeting to fill those terms that expire at that annual meeting. If any directors are not elected at any annual meeting, they may be elected at any other regular meeting or at a special meeting held for that purpose (which need not be the exclusive purpose of that meeting).

Each director, including a director elected to fill a vacancy or elected at a special meeting, shall hold office until expiration of the term for which elected and until a successor has been elected and qualified.

6.2. REMOVAL OF DIRECTORS

(a) The board may declare vacant the office of a director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty under Section 5230 and following of the California Nonprofit Corporation Law.

(b) A director may be removed without cause by the vote of a majority of the directors then in office.

(c) A director who, for a period of one (1) year, has not attended any board or committee meetings or communicated with the board, the Chair of the Board or Vice-Chair of the Board in their official capacities, and has failed to pay then applicable board dues, as determined by the Executive Committee or the board, may be deemed to have resigned. The determination shall be noted in the minutes of the board or Executive Committee, as applicable and notice of such deemed resignation shall be given to the affected director promptly following such determination.

### 6.3. VACANCIES

(a) Vacancies on the board shall exist

(i) on the death, resignation or removal of any director or

(ii) whenever the number of authorized directors is increased.

(b) Any director may resign effective upon giving written notice to the Chair of the Board, the Secretary, or the board. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. No director may resign if such resignation will leave the corporation without at least one duly elected director in charge of its affairs.

(c) A reduction of the number of authorized directors shall be effective only upon the expiration of the then-current directors' terms of office or upon the occurrence of any other vacancy in the board. That is, a reduction in the number of authorized directors will not terminate or shorten the terms of any directors in office at the time that the resolution to reduce the number of authorized directors is approved.

(d) Vacancies on the board may be filled by approval of the board or, if the number of directors then in office is less than a quorum, by:

(1) The unanimous written consent of the directors then in office,

(2) The affirmative vote of a majority of the directors then in office at a meeting held pursuant to notice or a waiver of notice complying with this Article of these Bylaws, or

(3) A sole remaining director.

(e) A person elected to fill a vacancy as provided by this Section shall hold office until the next election of the board or until his or her death, resignation or removal from office.

## ARTICLE 7 LIABILITY OF DIRECTORS

### 7.1. NON-LIABILITY OF DIRECTORS

The directors shall not be personally liable for the debts, liabilities, or other obligations of the corporation.

### 7.2. INSURANCE FOR CORPORATE AGENTS

This corporation shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, directors, employees, and other agents to cover any liability asserted against or incurred by any officer,

director, employee, or agent in such capacity or arising from the officer's, director's, employee's, or agent's status as such.

### 7.3. INDEMNIFICATION BY CORPORATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS

(a) To the fullest extent permitted by law, this corporation may indemnify its directors, officers, employees, and other persons described in Nonprofit Corporation Law section 5238(a) (including persons formerly occupying any such positions) against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding," as that term is used in that section, and including an action by or in the right of the corporation, by reason of the fact that the person is or was a person described in that section. ("Expenses" as used in this Bylaw shall have the same meaning as in that section of the Nonprofit Corporation Law.)

(b) On written request to the board by any person seeking indemnification under Nonprofit Corporation Law section 5238(b) or section 5238(c), the board shall promptly decide pursuant to Nonprofit Corporation Law section 5238(e) whether the applicable standard of conduct set forth in Nonprofit Corporation Law section 5238(b) or section 5238(c) has been met and, if so, the board shall authorize indemnification. In determining whether indemnification is available to the director, officer, or agent of this Corporation under California law, the determination as to whether the applicable standard of conduct set forth in Corporations Code §5238 has been met shall be made by a majority vote of a quorum of directors who are not parties to the proceeding. If the number of directors who are not parties to the proceeding is less than two-thirds of the total number of directors in office at the time the determination is to be made, the determination as to whether the applicable standard of conduct has been met shall be made by the court in which the proceeding is or was pending.

(c) To the fullest extent permitted by law and except as otherwise determined by the board in a specific instance, expenses incurred by a person seeking indemnification under this Section in defending any proceeding covered by this Section shall be advanced by the corporation before final disposition of the proceeding on receipt by the corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately found that the person is entitled to be indemnified by the corporation for those expenses.

(d) The indemnification provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled, and shall continue as to a person who has ceased to be an agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

## **ARTICLE 8 OFFICERS**

### 8.1. NUMBER OF OFFICERS

The officers of the corporation shall be a Chair of the Board, a Chief Executive Officer who shall be designated the Executive Director, a Secretary, and a Chief Financial Officer who shall be designated the Treasurer. The corporation may also have, as determined by the board, one or more Vice Chairs of the Board, Assistant Executive Directors, Assistant Secretaries, Assistant Treasurers, or other officers. Any number of offices may be held by the same person except that neither the Secretary nor the Treasurer may serve as the Executive Director or Chair of the Board.

### 8.2. QUALIFICATIONS

Any natural person over the age of eighteen (18) may serve as an officer of this corporation.

8.3. ELECTION, AND TERM OF OFFICE

Except those officers appointed in accordance with the provisions of Section 4 of this Article, officers shall be elected by the board at the annual meeting, and shall serve at the pleasure of the board, subject to the rights of any officer under any employment contract. Each officer shall hold office for renewable terms of one year.

8.4. SUBORDINATE OFFICERS

The board may appoint, and may authorize the Chair of the Board or the Executive Director to appoint such other officers or agents as it may deem desirable, and such officers shall serve such terms, have such authority, and perform such duties as may be prescribed from time to time by the board.

8.5. REMOVAL AND RESIGNATION

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the board, at any regular or special meeting of the board, or, except in case of an officer chosen by the board, by an officer on whom such power of removal may be conferred by the board.

Any officer may resign at any time by giving written notice to the board, the Chair of the Board or the Executive Director. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this Section shall be superseded by any conflicting terms of a contract which has been approved or ratified by the board relating to the employment of any officer of the corporation.

8.6. VACANCIES

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise of any officer shall be filled by the board. In the event of a vacancy in any office other than that of Chair of the Board, such vacancy may be filled temporarily by appointment by the Chair of the Board until such time as the board shall fill the vacancy. A person so appointed to a vacant office (whether appointed by the Chair of the Board or elected by the board) shall hold that office until the next annual meeting of the board or until his or her death, resignation or removal from office. Vacancies occurring in offices appointed at the discretion of the board may or may not be filled as the board shall determine.

8.7. DUTIES OF CHAIR OF THE BOARD

The Chair of the Board shall:

- (a) Be a member of the board and shall preside at all meetings of the board.
- (b) Except as otherwise expressly provided by law, by the Articles of Incorporation, or by these Bylaws, in the name of the corporation execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the board.
- (c) Perform all other duties incident to his or her office and such other duties as may be required by law, by the Articles of Incorporation of this corporation, or by these Bylaws, or which may be prescribed from time to time by the board.

8.8. DUTIES OF VICE-CHAIRS OF THE BOARD



In the absence or disability of the Chair of the Board, the Vice-Chairs of the Board, if any, in order of their rank as fixed by the board or, if not ranked, a Vice-Chair of the Board designated by the board, shall perform all powers of, and be subject to all the restrictions upon, the Chair of the Board. The Vice Chairs of the Board shall have such other powers and perform such other duties as from time to time may be prescribed by the board or the Chair of the Board.

#### 8.9. DUTIES OF SECRETARY

The Secretary shall:

- (a) Certify and keep, or cause to be kept, at the principal office of the corporation the original, or a copy, of the Articles of Incorporation and of these Bylaws, as amended or otherwise altered to date.
- (b) Keep, or cause to be kept, at the principal office of the corporation or at such other place as the board may direct, a book of minutes of all meetings, proceedings and actions of the board and of committees of the board. The minutes of meetings shall include the time and place that the meeting was held; whether the meetings was annual, general, or special, and, if special, how authorized; how notice was given and to whom; the names of the persons present at the board and committee meetings; the actions taken and decisions made by the board at that meeting, including the votes for, against and in abstention of each such action or decision (and may include how each director voted on such action or decision).
- (c) See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law.
- (d) Be custodian of the records and of the seal of the corporation, if there is a seal, and see that the seal is affixed to all duly executed documents, the execution of which on behalf of the corporation under its seal is authorized by law or these Bylaws and by the board.
- (e) Exhibit at all reasonable times to any director of the corporation, or to his or her agent or attorney, on request therefor, these Bylaws, the minutes of the proceedings of the directors of the corporation, and the corporation's applications for tax exemption.
- (f) In general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Articles of Incorporation of this corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the board.

#### 8.10. DUTIES OF TREASURER

The Treasurer shall:

- (a) Keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses. Books of account shall be maintained in accordance with sound accounting principles, consistently applied.
- (b) Send or cause to be given to the directors such financial statements and reports as are required to be given by law, by these Bylaws, or by the board. The books of account shall be open to inspection by any director at all reasonable times.

(c) Have charge and custody of, and be responsible for, all funds and securities of the corporation, and (1) deposit, or cause to be deposited, all money and other valuables in the name and to the credit of corporation with such depositories as the board may designate and (2) disburse, or cause to be disbursed, the corporation's funds as the board may order.

(d) Render to the Chair of the Board and directors, whenever requested, an account of any or all of his or her transactions as Treasurer, and of the financial condition of the corporation.

(e) Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.

(f) In general, perform all duties incident to the office of Treasurer and such other duties as may be required by law, by the Articles of Incorporation of the corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the board.

(g) If required by the board, give the corporation a bond in the amount and with the surety or sureties specified by the board for faithful performance of the duties of the office and for restoration to the corporation of all of its books, papers, vouchers, money, and other property of every kind in the possession or under the control of the Treasurer on his or her death, resignation, retirement, or removal from office.

(h) Provide, or cause to be provided, to the public, all Internal Revenue Service filings required to be disclosed and made generally available to the public in the form or forms required by the Internal Revenue Service or by statute.

#### 8.11. EXECUTIVE DIRECTOR

The Executive Director shall be the chief executive officer of the corporation and shall generally supervise, direct and control the corporation's activities and affairs, subject to the authority of the board. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the Articles of Incorporation of this corporation, or by these Bylaws, or which may be prescribed from time to time by the board.

The Executive Director shall be permitted to attend all meetings of the board and the Executive Committee, except those held in executive session. Unless otherwise elected to the board as provided in this Section 8.11 and Article 4 of these Bylaws, the Executive Director shall not be considered a director or member of the Board for any purpose, including without limitation for purposes of voting, counting the total authorized number of directors as set forth in Section 4.2 of Article 4 of these Bylaws, or constituting a quorum, nor shall he or she have any of the duties or liabilities of a director or member of the board. So long as the Executive Director is a paid employee of the Corporation, he or she shall not be eligible to serve as a director of the Corporation.

#### 8.12. COMPENSATION

The salaries, if any, of the officers shall be fixed from time to time by resolution of the board. The salary received by any officer of this corporation shall be reasonable and given in return for services actually rendered to the corporation that relate to the performance of the charitable or public purposes of this corporation. No officer shall be prevented from receiving such salary by reason of the fact that he or she is also a director of the corporation, provided, however, that such compensation paid a director for serving as an officer of this corporation shall only be allowed if permitted under the provisions of Article 4

**ARTICLE 9  
COMMITTEES**

9.1. COMMITTEES

(a) The board may, by a vote of a majority of the directors then in office, designate three (3) or more of its members, one of whom must be the Chair of the Board, to constitute an Executive Committee and delegate to such Committee any of the powers and authority of the board in the management of the business and affairs of the corporation, except as limited in this Section 1.

(b) Notwithstanding the existence or lack thereof of an Executive Committee, the board may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of two or more directors, to serve at the pleasure of the board and have such authority as is delegated by the board.

(c) Only committees consisting wholly of directors may take action or make decisions on behalf of the corporation.

(d) The following powers are reserved to the board of directors as a whole and may not be delegated to any committees thereof:

(1) The filling of vacancies on the board or on any committee that has the authority of the board;

(2) The appointment of committees of the board or the members thereof.

(3) The fixing of compensation of the directors for serving on the board or on any committee.

(4) The amendment or repeal of Bylaws or Articles of Incorporation, or the adoption of new Bylaws or Articles of Incorporation.

(5) The amendment or repeal or any resolution of the board which by its express terms is not so amendable or repealable.

(6) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected.

(7) The approval of any transaction to which this corporation is a party and in which one or more of the directors is a party or has a material financial interest, except as expressly provided in Section 5233(d)(3) of the Nonprofit Corporation Law.

(e) By a majority vote of the directors then in office, the board may at any time revoke or modify any or all of the authority so delegated, increase or decrease but not below two (2), the number of its members, and fill vacancies therein from the members of the board. Each Committee shall keep regular minutes of its proceedings, cause them to be filed with the corporate records, and report the same to the board from time to time as the board may require.

9.2. COMPENSATION COMMITTEE AND COMPENSATION REVIEW

At any time this Corporation compensates its Chief Executive Officer or Chief Financial Officer, the Corporation shall have a Compensation Committee consisting of at least three Directors and exclusively of Directors.

Directors who are also employees of the Corporation may not serve on the Compensation Committee. The Compensation Committee shall review the compensation of the Chief Executive Officer, Chief Financial Officer as well as of such other officers of the Corporation as the Compensation Committee determines appropriate. This review shall occur when such officer is hired, when the term of employment of such officer is renewed or extended, and when the compensation of such officer is modified, unless the modification applies to substantially all of the employees of this corporation. Based on its review, the Compensation Committee shall recommend just and reasonable compensation amounts to the board. At the request of the Chief Executive Officer or the board, the Compensation Committee shall review any issue involving staff compensation and benefits, including but not limited to housing, health, and retirement plans. In the absence of a separate Compensation Committee, the Executive Committee shall serve as the Compensation Committee.

### 9.3. AUDIT COMMITTEE

If this corporation is required to register with the Office of the Attorney General, in any fiscal year in which the corporation has gross revenues of \$2 million or more this corporation shall have an audit committee. Notwithstanding the other provisions of this Article, the audit committee shall have the following duties and composition:

- (a) It shall be the duty of the audit committee to:
  - (1) Recommend to the board of directors the retention and termination of the independent auditor;
  - (2) Confer with the auditor to satisfy the committee members that the financial affairs of the charitable organization are in order;
  - (3) Review and determine whether to accept the audit; and
  - (4) Approve performance of any non-audit services to be provided by the auditing firm. In addition, the audit committee may negotiate the compensation of the auditor on behalf of the board.
- (b) The audit committee shall be composed of at least one person. Audit committee members need not be directors of the corporation. In addition, the composition of the audit committee shall be restricted as follows:
  - (1) The corporation's Chair of the Board, chief executive officer, chief financial officer (treasurer), any paid staff, and anyone who does business or has any financial interest in any entity that does business with the nonprofit may not be on the audit committee.
  - (2) If the corporation has a finance committee, its members must comprise less than 50% of the audit committee and the chair of the finance committee may not serve on the audit committee.
- (c) Audit committee members may receive no more compensation than directors receive for their service to the corporation as directors.

### 9.4. ADVISORY COMMITTEES

The corporation shall have such other committees as may from time to time be designated by resolution of the board. Such other committees may consist of persons who are not also members of the board. These additional

committees shall act in an advisory capacity only and shall be clearly titled as "advisory" committees. The following provisions apply to the following advisory committees, if and when formed by the board:

(a) **Governance Committee.** The Board may appoint a Governance Committee consisting of at least two (2) board members and such other persons, if any, as it shall appoint, to recommend nominees for vacant and expiring Board positions, board engagement policies and practices, and other matters concerning corporate governance. Recommendations of the Governance Committee are not binding. Without limiting the foregoing, the board may consider any other nominees whose names are duly submitted to the board before or at the meeting at which the election or appointment of one or more board members is to take place.

(b) **Finance Committee.** The Board may designate a Finance Committee consisting of at least two board members and such other persons, if any, as it shall appoint, to review the budgets, statements of account and financial practices of the Corporation.

(c) **Development Committee.** The Board may designate a Development Committee consisting of at least two Board members and such other persons, if any, as it shall appoint, to work with the staff in developing events and fundraising programs and activities, subject to adoption by the Board.

#### 9.5. MEETINGS AND ACTION OF COMMITTEES

Meetings and actions of all committees shall be governed by, noticed, held and taken in accordance with the provisions of these Bylaws concerning meetings of the board, with such changes in the context of such Bylaw provisions as are necessary to substitute the committee and its members for the board and its members; excepting, however, that the time for regular meetings of committees may be fixed by resolution of the board or by the committee. The time for special meetings of committees may also be fixed by the board. The board may also adopt rules and regulations pertaining to the conduct of meetings of committees to the extent that such rules and regulations are not inconsistent with the provisions of

### ARTICLE 10 EXECUTION OF INSTRUMENTS DEPOSITS AND FUNDS

#### 10.1. EXECUTION OF INSTRUMENTS

Except as otherwise provided in these Bylaws, the board may by resolution authorize any officer or agent of the corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount if that contract exceeds one year in duration, or if that contract is not within the budget approved by the Board or otherwise is not in the ordinary course of business.

#### 10.2. CHECKS AND NOTES

The board shall determine who shall be authorized from time to time on the corporation's behalf to sign checks, drafts and other orders for payment of money. Such authority may be general or confined to specific instances.

#### 10.3. DEPOSITS

All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the board may select.

10.4. GIFTS

The board may accept on behalf of the corporation any contribution, gift, bequest, or devise for the charitable or public purposes of this corporation.

**ARTICLE 11  
CORPORATE RECORDS, REPORTS AND SEAL**

11.1. MAINTENANCE OF CORPORATE RECORDS

The corporation shall keep at its principal office in the State of California:

- (a) Minutes of all meetings of directors and committees of the board, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof;
- (b) Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses;
- (c) A copy of the corporation's Articles of Incorporation and these Bylaws as amended to date; and
- (d) Copies of all filings made to the Internal Revenue Service, the California Franchise Tax Board, California Secretary of State, and California Attorney General that the corporation is required, by statute or regulation, to make generally available to the public.

11.2. CORPORATE SEAL

The board may adopt, use, and at will alter, a corporate seal. Such seal shall be kept at the principal office of the corporation. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

11.3. DIRECTORS' INSPECTION RIGHTS

Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the corporation.

11.4. RIGHT TO COPY AND MAKE EXTRACTS

Any inspection under the provisions of this Article may be made in person or by agent or attorney and the right to inspection includes the right to copy and make extracts.

11.5. ANNUAL REPORT

The board shall cause an annual report to be furnished not later than 120 days after the close of the corporation's fiscal year to all directors of the corporation, which report shall contain the following information in appropriate detail:

- (a) The assets and liabilities, including the trust funds, of the corporation as of the end of the fiscal year;

- (b) The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- (c) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the fiscal year; and
- (d) The expenses or disbursements of the corporation, for both general and restricted purposes, during the fiscal year.

The annual report shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the corporation that such statements were prepared without an audit from the books and records of the corporation.

This requirement of an annual report shall not apply if the corporation receives less than \$25,000 in gross receipts during the fiscal year, provided, however, that the information specified above for inclusion in an annual report must be furnished annually to all directors.

#### 11.6. ANNUAL STATEMENT OF CERTAIN TRANSACTIONS AND INDEMNIFICATIONS

As part of the annual report to all directors, or as a separate document if no annual report is issued, the corporation shall, within 120 days after the end of the corporation's fiscal year, annually prepare and furnish to each director a statement of any transactions or indemnifications of the following kind:

- (a) Any transaction (i) to which the corporation, or its parent or subsidiary, was a party, (ii) in which an "interested person" had a direct or indirect material financial interest, and (iii) which involved more than \$50,000 or was one of several transactions with the same interested person involving, in the aggregate, more than \$50,000. For these purposes, an "interested person" is either:
  - (1) Any director or officer of the corporation, its parent, or subsidiary (but mere common directorship shall not be considered such an interest); or
  - (2) Any holder of more than ten percent (10%) of the voting power of the corporation, its parent, or its subsidiary.

The statement shall include a brief description of the transaction, the names of interested persons involved, their relationship to the corporation, the nature of their interest in the transaction and, if practicable, the amount of that interest, provided that if the transaction was with a partnership in which the interest person is a partner, only the interest of the partnership need be stated.

- (b) Any indemnification or advances aggregating more than \$10,000 paid during the fiscal year to any officer or director of the corporation under Section 3 of Article 7 of these Bylaws.

#### 11.7. FINANCIAL AUDIT

The Corporation shall obtain a financial audit for any tax year in which it receives or accrues gross revenue of \$2 million or more, excluding grant or contract income from any governmental entity for which the governmental entity requires an accounting. Any audited financial statements obtained by the Corporation, whether or not required by law, shall be made available for inspection by the Attorney General and by the general public within 9 months after the close of the fiscal year to which the statements relate. For three (3) years, such statements (a) shall be available at the Corporation's principal, regional, and district offices during regular business hours and (b) shall be made available either by mailing a copy to any person who so requests in person or in writing, or by posting them on the Corporation's website.

**ARTICLE 12  
FISCAL YEAR**

12.1. FISCAL YEAR OF THE CORPORATION

The fiscal year of the corporation shall begin on the first (1st) day of January in each calendar year and end on the last day of December of the same calendar year.

**ARTICLE 13  
AMENDMENT OF BYLAWS**

13.1. AMENDMENT

Subject to any provision of law applicable to the amendment of Bylaws of a Nonprofit Corporation, these Bylaws, or any of them, may be altered, amended, or repealed and new Bylaws adopted by approval of a majority of the directors then currently in office.

**ARTICLE 14  
AMENDMENT OF ARTICLES**

14.1. AMENDMENT OF ARTICLES

Any amendment of the Articles of Incorporation may be adopted by approval of a majority of the directors then currently in office.

14.2. CERTAIN AMENDMENTS

Notwithstanding Section 14.1 of this Article, this corporation shall not amend its Articles of Incorporation to alter any statement which appears in the original Articles of Incorporation regarding the names and addresses of the first directors of this corporation nor the name and address of its initial agent, except to correct an error in such statement or to delete either statement if the corporation has filed a "Statement by a Domestic Non-Profit Corporation" pursuant to Section 6210 of the Nonprofit Corporation Law.

**ARTICLE 15  
MEMBERS**

15.1. DETERMINATION OF MEMBERS

This corporation shall have no voting members within the meaning of the Nonprofit Corporation Law. At its sole discretion, the board may admit individuals to one or more classes of nonvoting members. The class or classes of nonvoting members shall have such rights and obligations as the board finds appropriate.

**ARTICLE 16  
CONSTRUCTION AND DEFINITIONS**

16.1. CONSTRUCTION AND DEFINITION

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Nonprofit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular, the term "person", unless otherwise specified, includes both the corporation and a natural person, and vice versa.



16.2. ELECTRONIC TRANSMISSION

Subject to any guidelines and procedures that the board may adopt from time to time, the terms "written" and "in writing" as used in these Bylaws include any form of recorded message in the English language capable of comprehension by ordinary visual means and may include electronic transmissions, such as facsimile or e-mail, provided (i) for electronic transmissions from the Corporation, the Corporation has obtained an unrevoked written consent from the recipient to the use of such means of communication; (ii) for electronic transmissions to the Corporation, the Corporation has in effect reasonable measures to verify that the sender is the individual purporting to have sent such transmission; and (iii) the transmission creates a record that can be retained, retrieved, reviewed, and rendered into clearly legible tangible form.

**CERTIFICATE OF SECRETARY**

I, the undersigned, the duly elected Secretary of LAXART, a California nonprofit public benefit corporation, do hereby certify:

That the foregoing Bylaws consisting of 19 pages were adopted as the Bylaws of the Corporation by the Directors of the Corporation on \_\_\_\_\_, 2019, and the same do now constitute the Bylaws of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name on \_\_\_\_\_, 2019.

\_\_\_\_\_, Secretary



## **ABOUT MOCA**

**WE ARE A MUSEUM.**

We present, collect, preserve, and interpret the art of our time.

**WE ARE CONTEMPORARY.**

We question and adapt to the changing definitions of art.

**WE CARE.**

We make the experience of art accessible.

We embrace the inevitability of change.

We support the multiplicity of perspectives.

We encourage the urgency of contemporary expression.

Established in 1979, we are the only artist-founded museum in Los Angeles. We are dedicated to collecting and exhibiting contemporary art. We house one of the most compelling collections of contemporary art in the world, comprising roughly 7000 objects, and have a diverse history of ground-breaking, historically-significant exhibitions.

We are committed to the collection, presentation, and interpretation of art created after 1940, in all media, and to preserving that work for future generations. We provide leadership in the field by identifying and presenting the most significant and challenging art of our time, actively supporting the creation of new work, and producing original scholarship.

With two distinct venues in Los Angeles—MOCA Grand Avenue, and The Geffen Contemporary at MOCA—and Michael Heizer's seminal artwork *Double Negative* (1969-70) in the Nevada desert, we engage audiences through an ambitious program of exhibitions, educational programs, and publishing.

## **ABOUT THE GEFFEN**

A former police car warehouse in L.A.'s Little Tokyo Historic District, renovated by the noted California architect Frank Gehry, The Geffen Contemporary at MOCA (formerly The Temporary Contemporary) opened in 1983. This location offers 40,000 square feet of exhibition space.

WAREHOUSE Programming is open with an expanded bookstore, a reading nook, rest, meet, and workspaces with free WiFi, a coffee cart featuring drinks and food by Cafe Dulce, and several video installations. The current video works on view are by artists Fischli & Weiss and Mark Leckey. Over the course of the coming months, MOCA will be actively transitioning this space into a vibrant, multi-use anchor under the umbrella of WAREHOUSE Programs.



## SELECTED PAST GEFFEN EXHIBITIONS

- (2021) [abolitionist pod \(prototype\)](#) Crenshaw Dairy Mart
- (2019/20) [The Foundation of the Museum](#)
- (2018/9) [Laura Owens](#)
- (2018/9) [Survey](#) Zoe Leonard
- (2017/8) [The Theater of Disappearance](#) Adrián Villar Rojas
- (2017) [Love Is The Message, The Message Is Death](#) Arthur Jafa (Geffen)
- (2016/7) [Electric Earth](#) Doug Aitken
- (2015/6) [RIVER OF FUNDAMENT](#) Matthew Barney

## SELECTED PAST PROGRAMS

- (2021) [Creating the Compassionate City](#)
- (2021) [Uncommon Commons: What Can Public Art Do for Environmental Activism?](#)
- (2020) [Uncommon Commons: Who is the Public in Public Art](#)
- (2020) [Black Spring: Return from Exile](#)
- (2020) [For Freedoms Congress](#)
- (2019) [Earl Sweatshirt x MOCA](#)
- (2019) [LACMDS presents Slightly Guided Dance Party](#)
- (2019) [The Creative Thinking Project](#)
- (2018) [Vote For Your Lives Rally](#)
- (2018) [SCREEN: Community Cinema from Karachi to Los Angeles](#)
- (2018) [MOCA Community Day](#)
- (2018) [Architecture 101: Beyond Buildings](#)
- (2017) [MOCA Music: Bana Haffar & Stephanie Cheng Smith](#)
- (2017) [Anna Chave on Biography: Carl Andre](#)
- (2017) [The Idea of Sound with Terry Riley](#)
- (2016) [The Idea of the Oceans](#)
- (2016) [What is Contemporary? Black Lives Matter](#)



## **ABOUT METHODS & MATERIALS**

Established in Chicago in 1990, Methods & Materials, Inc., is dedicated to fine art rigging, assembly, installation, re-location, and de-installation of large-scale sculptures and objects, and to the careful handling of valuable artifacts. Our expertise and experience, along with our complete design, fabrication, and storage facilities, ensures that Methods & Materials will customize a safe, efficient, and economical solution specific to our clients' needs. We are proud to be a certified Women's Business Enterprise (WBE)

## **SERVICES**

### **Rigging & Specialized Handling**

No project is too large, heavy, or unwieldy for us. We have an extensive background in rigging, hoisting, and maneuvering large-scale objects both in-and outdoors. Our team will:

- Provide and operate the necessary equipment
- Source and rig alongside local crane companies
- Orchestrate lifting and installation plans
- Meet engineering specifications
- Execute complex installations safely and efficiency

### **Storage**

Our M&M's heated warehouse provides safe and cost-effective storage for sculpture and artifacts. When de-installing an art piece, we can offer on-site crate fabrication and transportation to our facility.

### **Installation**

Methods & Materials, Inc. has been installing permanent collections for galleries, museums, municipalities, corporations, and private collectors since 1990. We have the knowledge, experience, and professionalism necessary to oversee all aspects of your project including streamline communication between artists, museum staff, engineers, fabricators, architects, and installation team, specification and fabrication of mounts and installation methods, logistics and shipping arrangements, sourcing and/or fabricating hardware, and project management.

Temporary Our services provide venues with safe and efficient installation and de-installation of temporary exhibits. We offer either a full crew to expertly handle all facets of a project, or an Installation Supervisor to work with your perpetrators. We also provide consulting services in the early phases of exhibition/collection design, logistics and project planning, and transportation.

Traveling Exhibitions From fossils to locomotives, sarcophagi to totem poles, we have the know-how to handle the most challenging traveling exhibitions. We provide project management for traveling exhibitions and supply exhibit support services, including administration, and trucking; as well as rigging and installation/de-installation services.



## **Fabrication**

Crates Large-scale, custom crates and pallets can be hard to come by. We can assist in a turn-key operation when de-installing by crating and palletizing your sculptures, artifacts, etc. for storage and shipping.

Mounts When it comes to engineered solutions or custom-design substrates and hanging solutions, we can fabricate what your project may require. With fully operational metal and wood shops, we can build to your specifications.

## **SELECTED CLIENTS**

Art Institute of Chicago  
The British Museum  
Citibank NY  
City of Chicago  
Dietl International  
Driehaus Museum  
Eskenazi Museum of Art, Indiana University  
The Field Museum  
Frederik Meijer Garden & Sculpture Park  
Kimbell Museum of Art  
National Museum of Mexican Art  
Montgomery Museum of Fine Arts  
Museum of Modern Art  
Russell Bowman Art Advisory  
SculptureMilwaukee  
Smart Museum of Art  
Smithsonian institution  
Transportation Consultants International Inc.  
Zolla/Lieberman Gallery

## **SELECTED PROJECTS**

(2020) [Atmospheric Wave Wall](#) Olafur Eliasson at Willis Tower, Chicago  
(2020) [Constellation](#) Santiago Calatrava at River Point, Chicago  
(2020) [Chazen Mural](#) James Watrous at University of Wisconsin, Madison  
(2019) [All Equations Are Wave Equations](#) Alyson Shotz at Hunter Museum of Art, Chattanooga  
(2018) [Field Lines](#) Rob Ley at O'Hare International Airport, Chicago  
(2017) [Relocation of Museum Dioramas](#) at University of Minnesota, Falcon Heights

# CITY OF CHARLOTTESVILLE, VIRGINIA. CITY COUNCIL AGENDA.



Agenda Date:	December 21, 2021.
Action Required:	Public Hearing and Council Appropriation (1 <sup>st</sup> of 2 readings).
Presenter:	Chris Cullinan, Director of Finance.
Staff Contacts:	Chris Cullinan, Director of Finance. Krisy Hammill., Senior Budget and Management Analyst.
Title:	Year-End Adjustments Fiscal Year 2021.

## **Background:**

The audit for Fiscal Year (FY) 2021 has been completed. To close the City's financial records for the year, several year-end adjustments to various accounts require City Council action. These adjustments are to carry over unspent funds from the last fiscal year to the current fiscal year. These carry overs are the result of either previous City Council policy direction or requirements associated with the funds.

## **Discussion:**

For FY2021, the General Fund ended \$5.5 million in excess of its 17% fund balance policy.

COVID 19 influenced the City's finances in FY 2021 as several economically sensitive revenues (Lodging Taxes, Meals Taxes, and Personal Property Taxes) performed under budget and below FY2020 levels. Fortunately, Real Estate Taxes (the City's largest revenue source for the General Fund) performed slightly better than expected as real estate values increased and property owners were able to make their payments in full and on time. The City's Sales Tax receipts also performed better than expected because of greater online sales during the pandemic and consumer spending on nondiscretionary goods (such as groceries).

General Fund expenditures were below budget which helped offset reduced revenue performance. Several large departments had salary and benefit savings from vacant positions. Departments also saw savings as a result of reduced levels of service and closed facilities resulting from the pandemic. The City also used received \$8.2 million of CARES Act funds which were used for eligible expenses in lieu of the City using its own funds (Note: the surplus General Fund revenues do not include CARES funds as these are accounted for in a separate fund).

## **Recommendation/Carryover Request:**

Staff have three recommendations for City Council's consideration:

1. Transfer \$6,674,971 from the Citywide Reserve-Economic Downturn account to the CIP Contingency account. The FY2021 budget included a reserve in anticipation of COVID 19 having a negative impact on the City’s revenues. This reserve was created by not transferring funds from the General Fund to the CIP. While this strategy was in contradiction to the City’s financial management policies, it was deemed prudent in light of the extraordinary and uncertain circumstances caused by the pandemic. As the fiscal year progressed, the City did not need to use these reserves. Now that the fiscal year is complete, staff recommends City Council transfer these funds to the CIP Contingency account in acknowledgement of how the reserve was created in the first place and the need for additional capital funds.

2. Transfer \$5,503,327 from the General Fund fund balance to 2213001000 for employee compensation. Per City policy, the surplus fund balance amount is recommended to be transferred to the CIP Contingency account. However, discussions with City Council and city management indicate a desire that employee compensation be the focus of utilizing surplus funds. The proposed use of these funds includes:

\* A \$3,500 bonus for all employees who worked full time between January 1, 2021 and November 26, 2021. This is “thank you” for their service and essential work during what has been a difficult year. For employees who joined the City during the year or are seasonal/part time/temporary, they will receive a pro-rated amount of the \$3,500 based on when they started and/or hours worked during the year.

\* A 6% pay adjustment for all employees. This is a market adjustment which recognizes the need for the City to retain and recruit qualified employees.

3. Transfer \$6,393 from General Fund fund balance to City Treasurer’s Office. In April of 2019, the City Treasurer’s Office opened a DMV Select Office in the lobby of City Hall. The agreement with the Commonwealth included language by which excess funds generated by the DMV transactions would be remitted to the Treasurer’s Office to compensate for additional processing costs. The amount listed above reflects the excess revenue from FY2021 due to the Treasurer’s Office in accordance with the DMV Select contract.

In addition to these recommendations are several carry over appropriations needed to close the books for the fiscal year. These are detailed in the attached memo.

**Community Engagement:**

This agenda item includes a public hearing and is the first reading of this appropriation.

**Budgetary Impact:**

As noted above, the recommended transfer from the Citywide Reserve-Economic Downturn account to the CIP Contingency account is in accordance with the City’s financial policy and contributes towards a “pay as you go” (PAYGO i.e. cash) C.I.P. versus issuing bonds. The bonus recommendation is a one-



time expense which is an appropriate use of a one-time revenue. The midyear market adjustment does have on-going costs. Staff's analysis of current year revenues and future revenues indicate these pay increases are sustainable in the future.

**Alignment with Council Vision Areas and Strategic Plan:**

This resolution aligns with Goal 4 of the Strategic Plan, to be a well-managed and successful organization.

**Recommendation:**

Staff recommend that Council approve the first reading of the attached resolution.

**Alternatives:**

Amend the recommendations.

**Attachments:**

1. Memo- End of Year Adjustments.
2. FY 2021 Year End Appropriation.

**To:** Members of City Council.  
**From:** Chris Cullinan, Director of Finance.  
Krisy Hammill, Senior Budget and Management Analyst.  
**Date:** December 20, 2021  
**Subject:** **Fiscal Year 2021 End of Year Adjustments.**

In order to close the City’s financial records for Fiscal Year 2021, City Council is requested approve the attached resolution to adjust certain accounts.

Provided below is a brief description of the items contained in the various sections of the appropriation:

- Section I - General Fund.
- Section II - Facilities Repair Fund.
- Section III – Grants Fund.
- Section IV – School Gainsharing.

Included are names of the department or program, the amount of the adjustment and a brief discussion of the reason(s) for the appropriation.

**I. General Fund.**

(a) Departmental Appropriations – Section 1 (a).

The following appropriations are carryovers of unspent funds and shall be considered continuing appropriations unless further altered by Council.

- City Treasurer’s Office. \$6,393.

(b) Additional Transfers and Appropriations – Section 1(b).

- Transfer to Employee Benefits \$5,503,327.  
There funds will be used for employee compensation.
- Transfer to Capital Projects Fund \$6,674,971.  
These funds will be transferred to the C.I.P. Contingency Fund per the City’s financial policy.

**II. Facilities Repair Fund.**

- Courthouse Maintenance (P-00099) - \$6,130 - These unspent restricted court fees will be used for future court repair work or records conversion. The amount will be carried over in the Facilities Repair Fund.

- Courthouse Construction (P-00783) - \$8,014 – These unspent restricted court fees will be used for future renovations or construction projects relating to the courts and will be carried over in the Facilities Repair Fund.

### **III. Grants Fund.**

These funds were received from outside sources and are being appropriated to be spent by the respective grants:

- \$1,384 – these funds will be used for additional qualifying State Fire Grant expenditures (1900010).

### **IV. Schools Gainsharing.**

In 1998, the School Board and City Council entered into a gainsharing agreement. This agreement mandates that the first \$100,000 to go to facilities for School Capital Improvement Projects, the next \$100,000 is retained by the Schools in the General Fund and then any amount over \$200,000 will be shared equally (50/50) between the School Board and the City. For the year ending June 30, 2021, the Schools had an operating surplus of \$387,250. According to the formula, \$100,000 will be contributed to the City's School Lump Sum Project Fund, \$193,625 will be retained by the City Schools and \$93,625 will be returned to the City.

Cc: Lisa Robertson, City Attorney.

**FY 2020 Year End Appropriation**

**BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the actions hereinafter set forth are herein authorized with respect to the accounts of the City listed herein, for the fiscal year ended June 30, 2021. The memo to Council dated December 20, 2021 is hereby made part of this appropriation.

**I. General Fund (105).**

(a) Departmental Appropriations.

The following amounts shall be permitted to be carried over and expended in the General Fund’s respective cost centers or internal orders in the following fiscal year and shall remain as continuing appropriations unless further altered by Council:

1901001000 City Treasurer’s Office. \$6,393.

Total Section I (a). \$6,393.

(b) Additional Transfers and Appropriations.

2213001000. Transfer to Employee Benefits. \$5,503,327.

9803030000. Transfer to Capital Projects Contingency Fund. \$6,674,971.

Total Section I (b). \$12,178,298.

**II. Facilities Repair Fund (107).**

- Courthouse Maintenance (P-00099) - \$6,130 - These unspent restricted court fees will be used for future court repair work or records conversion. The amount will be carried over in the Facilities Repair Fund.
- Courthouse Construction (P-00783) - \$8,014 – These unspent restricted court fees will be used for future renovations or construction projects relating to the courts and will be carried over in the Facilities Repair Fund.

Total Section II. \$14,144.

**III. Grants Fund (209).**

These funds were received from outside sources and are being appropriated to be spent by the respective grants:

- \$1,384 – these funds will be used for additional qualifying State Fire Grant expenditures (1900010).

Total Section III.

\$1,384.

#### **IV. Schools Gainsharing.**

In 1998, the School Board and City Council entered into a gainsharing agreement. This agreement mandates that the first \$100,000 to go to facilities for School Capital Improvement Projects, the next \$100,000 is retained by the Schools in the General Fund and then any amount over \$200,000 will be shared equally (50/50) between the School Board and the City. For the year ending June 30, 2021, the Schools had an operating surplus of \$387,250. According to the formula, \$100,000 will be contributed to the City's School Lump Sum Project Fund and \$193,625 will be retained by the City Schools.

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



<b>Agenda Date:</b>	<b>December 20, 2021</b>
<b>Action Required:</b>	Adoption of Ordinance (2 <sup>nd</sup> of 2 Readings)
<b>Presenter:</b>	J. Lloyd Snook, City Councilor
<b>Staff Contact:</b>	Lisa Robertson, City Attorney
<b>Title:</b>	<b>Ordinance Re-enacting the PCRB as a Police Civilian Oversight Board, with expanded functions</b>

**Background:**

In November 2019 City Council enacted the current provisions of City Code Chapter 2, Article XVI (Police Civilian Review Board). Subsequently, in 2020, the Virginia General Assembly enacted Virginia Code §9.1-601, to provide express enabling legislation for the governing bodies of localities to establish law enforcement civilian oversight bodies. The state enabling legislation confers authority for City Council to assign seven categories of specific duties, and related duties as necessary to carry out effective oversight of the local law enforcement agency.

The enabling legislation also specifies that the governing body, rather than the oversight body itself, will establish the policies and procedures for the performance of any duties that are conferred upon the oversight body. As you will note in the proposed ordinance, the duties authorized within the ordinance cannot be undertaken by the board until City Council approves policies and procedures for each of the categories of duties. Once this ordinance is approved the work of preparing the policies and procedures will commence/ continue (City Council recently approved a set of hearing procedures that may be used by the board in the interim). Separately, rather than leaving it to the oversight board and chief of police to enter into “contractual” arrangements, the Ordinance requires the City Manager to prepare Standard Operating Procedures to ensure that information will be shared by the police department with the oversight board as required by the Ordinance, subject to reasonable recordkeeping protocols that will protect individuals’ “personal information”, as contemplated by the principles of information practice reflected in the Government Data Collection and Dissemination Practices Act (Va. Code §§ 2.2-3800 et seq.).

Currently the board authorized by Chapter 2, Article XVI of the City Code is referred to as a “Review Board” because—prior to the state enabling legislation—there was a limited range of functionality a board created within a municipality could undertake, primarily the review of

administrative/ internal investigations performed by the police department. The 2020 enabling legislation continues the existing authorization to review police administrative/internal investigations but goes further in providing for an expanded role referred to in the state legislation as “oversight”. Therefore, once the ordinance is updated by City Council, the board will be referred to going forward as the “Police Civilian Oversight Board”.

The existing board appointments do not need to be reconstituted. The board will continue to consist of seven (7) voting members and one (1) nonvoting member. Since the terms of the existing board seats were staggered originally so that not all of the seats could become vacant at once, there is no need to alter the terms of any existing members. The provisions of the proposed ordinance will work together with other City Code provisions (see, e.g., City Code 2-8) that govern appointments and terms of board and commission members.

In enacting the 2020 enabling legislation, the General Assembly addressed the new law’s relationship to existing statutes governing police disciplinary matters, as follows:

1. The 2020 legislation specifies that, within localities that have established a civilian oversight body, the Virginia Law Enforcement Procedural Guarantees Act shall not apply. Va. Code §9.1-507. (This does not mean that officers lose their due process rights under federal law, only that the General Assembly abolished the minimum procedural guarantees previously afforded under state law).
2. Va. Code §15.2-1507(A)(3)(8) was amended by the 2020 enabling legislation to specify that, with respect to any grievance that relates to a binding disciplinary determination made by a civilian oversight body, the officer subject to the disciplinary action are not eligible to use the normal grievance process, although they are authorized to use the City’s grievance panel to review discipline imposed by a civilian oversight body. Va. Code §9.1-601(F).

As with the original PCRFB, the updated oversight board will be required to comply with applicable provisions of FOIA’s public records and open public meeting requirements. Whether or not, in a given situation, the oversight body will be able to convene within a closed meeting will depend on which of the categories of functions the Board is performing and what FOIA laws say at the time the oversight body begins conducting their business. (It is anticipated that the General Assembly may within its 2022 Session consider several bills relating to police disciplinary files and other FOIA matters relating to an oversight body’s functional areas). It is recommended that any requirement to protect personnel information about identifiable individuals should be specified generally within the Ordinance--as it is within this proposed Ordinance—and then specific protocols for managing personnel information should be put into place that can be enforced regardless of whether or not closed meetings could be convened by the oversight body.

### **Discussion:**

The proposed Ordinance has been reviewed by both the City Attorney and the outside legal counsel for the PCRFB (the law firm of Sands Anderson, by attorneys Cynthia Hudson and Cullen Seltzer). The Ordinance represents many hours of work and collaboration between the City

Council committee and the PCRB's working committee. This agenda memo can't adequately convey the amount of time and effort that the Council and PCRB committee members have devoted to bringing this forward.

City Council may wish to discuss the following provision, which remains a topic of some controversy, and make a motion to amend the language of the proposed ordinance, if necessary, as a result of those discussions:

- Sec. 2-466(c): Within six months of appointment, and at least once a year thereafter, members shall participate in a ride-along session with the Department.

Wordsmithing continued until shortly prior to the deadline for Council agenda materials. If there are any modifications or amendments agreed to by the parties which do not show up in the attached Ordinance, the omission is accidental.

**Budgetary Impact:**

A number of the functions authorized within the ordinance will have a budgetary impact upon the City (and will require additional funding to be allocated to the PCOB budget) if they are to be effectively carried out as contemplated by the ordinance. However, the adoption of this ordinance will not, in and of itself, have any budgetary impact.

**Alternatives:**

City Council could leave the existing ordinance provisions in place; Council could also repeal the existing ordinance without enacting a new ordinance. Council may, by motion, amend any provision(s) within the attached proposed Ordinance.

**Recommendation:**

It is recommended that Council should adopt the attached proposed ordinance.

**Community Engagement:**

The proposed ordinance has been discussed at several PCRB meetings, and was publicly discussed and reviewed at the December 6, 2021, City Council meeting.

**Alignment with Council Vision Areas and Strategic Plan: yes.**

**Attachment(1):**

- Proposed Ordinance



**ORDINANCE**  
**AMENDING AND REENACTING CHAPTER 2 (ADMINISTRATION), ARTICLE XVI**  
**(POLICE CIVILIAN REVIEW BOARD) TO REESTABLISH THE CITY’S POLICE**  
**CIVILIAN REVIEW BOARD AS AN OVERSIGHT BOARD PURSUANT TO VIRGINIA**  
**CODE SECTION 9.1-601**

**WHEREAS** the Charlottesville City Council previously enacted an ordinance establishing a Charlottesville Police Civilian Review Board and codified the ordinance within Chapter 2, Article XVI of the Code of the City of Charlottesville (1990), as amended; and

**WHEREAS** on October 28, 2020, the Virginia General Assembly enacted House Bill 5055, which expressly authorizes the governing body of a locality to establish a law enforcement civilian oversight body; and

**WHEREAS** City Council hereby finds that it is in the public’s best interests to amend Chapter 2, Article XVI of the City Code to dissolve the City’s Police Civilian Review Board and to establish a Police Civilian Oversight Board in conformity with Virginia Code § 9.1-601 and to empower the Police Civilian Oversight Board with certain additional oversight authority and duties enabled by the statute; now, therefore,

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE, VIRGINIA, that”**

1. Article XVI (Police Civilian Review Board), Sections 2-450 through 2-464 of Chapter 2 (Administration) of the Code of the City of Charlottesville (1990), as amended, is and are hereby repealed, in their entirety, and

2. Chapter 2, Article XVI of said Code is hereby amended and reenacted as follows:

**CHAPTER 2 (ADMINISTRATION)**

**ARTICLE XVI. – POLICE CIVILIAN OVERSIGHT BOARD**

**Sec. 2-450 -Title**

This article shall be known as the Charlottesville Police Civilian Oversight Board Ordinance.

**Sec. 2-451 - Police Civilian Oversight Board Established**

Pursuant to Virginia Code §9.1-601, there is hereby established a Charlottesville Police Civilian Oversight Board, which shall be referred to as “the Board,” with powers granted as provided within this ordinance. The Board is a body established and appointed by the City Council of Charlottesville pursuant to Virginia Code §9.1-601(B) to perform functions authorized by the City Council in accordance with Virginia Code §9.1-601(C). It shall not be able to bring suit or

to be sued in its own name, except to the extent needed to request and defend subpoenas as authorized by this ordinance.

## **Sec. 2-452.-Powers and Duties of the Police Civilian Oversight Board.**

(a) **Purpose.** The purpose of the Board is to establish and maintain trust between and among the Charlottesville Police Department, which shall be referred to as “the Department,” the City Council, the City Manager, and the public.

(b) **Objectivity.** It is of fundamental importance that members of the Board be fair and objective in the conduct of their duties, and that they be perceived as fair and objective in the conduct of their duties.

(c) **Powers and Duties.** The Board shall have the following powers and duties:

- (1) To receive, investigate, and issue findings on complaints from civilians regarding the conduct of law enforcement officers and civilian employees of the Department;
- (2) To investigate and issue findings on incidents, including the use of force by a law enforcement officer, death or serious injury to any individual held in custody, serious abuse of authority or misconduct as defined in this section, allegedly discriminatory stops, and other incidents regarding the conduct of law enforcement officers and civilian employees of the Department;
- (3) At the conclusion of any investigation conducted pursuant to paragraphs (1) and (2), above, if the Board has found that an employee has committed misconduct, to recommend disciplinary action to the Chief of Police;
- (4) To investigate policies, practices, and procedures of the Department and to make recommendations regarding changes to such policies, practices and procedures, as set forth within Sec. 2-462 of this article;
- (5) To review investigations conducted internally by the Department, as set forth in Sec. 2-458 of this article, and to issue findings regarding the accuracy, completeness, and impartiality of the investigations and the sufficiency of any discipline resulting from such investigations;
- (6) To request reports of the annual expenditures of the Department, and to make recommendations to the City Council concerning future appropriations;

- (7) To make public reports on the activities of the Board, including investigations, hearings, findings, recommendations, determinations and oversight activities;
- (8) To hold hearings and, if, after making a good faith effort to obtain the voluntary attendance of witnesses and the production of books, papers, and other evidence necessary to perform its duties, the Board is unable to obtain such attendance or production, to apply to the Circuit Court for the City of Charlottesville for a subpoena compelling the attendance of such witness or the production of such books, papers and other evidence; and
- (9) To undertake other duties, as reasonably necessary, for the Board to effectuate its lawful purpose as provided for in this article, to effectively oversee the Department.

(d) **Definition of “serious abuse of authority or misconduct.”** “Serious abuse of authority or misconduct” shall include the following:

- (1) Verbal or other conduct regarding an individual or group that maligns or shows hostility for the individual or group because of race, color, religion, gender, national origin, age, disability, sexual orientation, or gender identity and expression;
- (2) Harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
- (3) Acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
- (4) Reckless endangerment of a citizen, detainee, or person in custody;
- (5) Violation of laws or ordinances;
- (6) Criminal or other misconduct occurring on or off the job which is related to job performance or is of such a nature that to continue the employee in the assigned position or in any City employment capacity would constitute negligence in regard to the City’s duties to the public or to other City employees;
- (7) In any matter within the jurisdiction of any officer, department or agency of the City: (a) the knowing falsification, concealment or cover-up of a material fact,

and/or (b) the knowing making of any false, fictitious or fraudulent statement or representation, and/or the making or using of any writing or document knowing the same to contain a false, fictitious or fraudulent statement or entry;

- (8) Sexual activity, including consensual sexual activity, on the job; and
- (9) Other serious violations of Charlottesville or Department policies or procedures, including the Department Code of Conduct.

(e) **Access to Department Information.** The Board is authorized to receive, and shall be provided full access to, all Department reports, files and records pertinent to Board investigations of complaints and incidents or to its review of Department Internal Affairs investigations, as authorized in this ordinance. All records, documents and materials in the possession of the Department or the City that are determined by the Board to be necessary and requested by the Board to carry out its authorized powers and responsibilities shall be provided to the Board subject to Board procedures adopted, with Council approval, for the protection of confidential information as defined in such procedures. Within 45 days of the enactment of this Article, the City Manager, in consultation with the Chief of Police and the Board, shall establish a Standard Operating Procedure setting forth how this access shall be given by the Department to the Board, how personal information shall be managed and protected by the Board in accordance with the requirements of Virginia Code §2.2-3800 *et seq.*, and under what circumstances or conditions it may be made available to the parties.

(f) **Department information to which the Board may not have access.** The Executive Director and the Board shall not have access to

- (1) juvenile records;
- (2) records that may reveal the identity or personal information, as defined in Virginia Code §2.2-3801, of a confidential informant;
- (3) investigative files for an active civil or criminal investigation by the Commonwealth Attorney, the Virginia Attorney General, the Virginia State Police, or the United States Department of Justice;
- (4) files related to an active EEOC claim, Human Rights Commission investigation, or civil claim involving a Department employee;
- (5) files containing information exempt from public disclosure pursuant to Virginia Code §§2.2-3706(B)(2), (3), (4), (5), (6), (7), (8), (10), (11); 2.2-3706(C); 2.2-3706.1(C)(1) through (C)(6); 2.2-3706.1(D); and 2.2-3706.1(E); or

(6) any information that the Police Department is not legally authorized to share.

(g) **Disputes over access.** If the Executive Director and the Board seek access to information the disclosure of which the Department believes would compromise ongoing investigations, disclosure may be withheld until such time as the need for maintaining confidentiality is no longer present, or until the City Manager has determined that the matter will not be compromised by the release of the information. If the Board believes that the City Manager is unreasonably withholding such information, the Board may consider whether to seek a subpoena requiring the production of such information pursuant to §2-458(f).

(h) **Procedures must be adopted before the Board begins to operate.** The Board shall not exercise the powers and duties set forth within paragraphs (c)(1)-(9) until City Council approves Operating Procedures, after consultation with the Board, pursuant to § 2-460(a).

## **Sec. 2-453 - Board Membership Appointment, and Terms.**

(a) **Appointment Process.** The City Council shall appoint the members of the Board. The Council shall announce a public application process with applications available online and by hardcopy in English and Spanish for individuals interested in serving on the Board. Council will seek to appoint fair-minded and objective members with a demonstrated commitment to community service who have training and experience, including lived experience, with topics relevant to the business of the Board, including law, police practices, human resources practices and procedures, trauma-informed mental health issues, and the sociology of historically over-policed communities.

(b) **Board composition.** The Board shall reflect the demographic diversity of the City of Charlottesville. The Board shall be composed of seven voting members and one non-voting member appointed by the City Council. The members shall be removable by the City Council for cause as specified in the Board Code of Ethics, violating the duty of confidentiality, failing to participate in required training, or other good cause.

- (1) Council shall appoint at least three members who are residents of public housing or who come from historically disadvantaged communities that have traditionally experienced disparate policing.
- (2) Council may appoint one member who represents an organization that seeks racial or social justice on behalf of historically disadvantaged communities.

- (3) The non-voting member of the Board shall be an individual with policing expertise or experience. The non-voting member may be a retired law enforcement officer who prior to his or her retirement was employed in a locality similar to the City of Charlottesville. The non-voting member need not be a resident of the City of Charlottesville.
- (4) The seven voting members of the Board shall be residents of the City of Charlottesville, except that if Council has appointed someone who represents an organization that seeks racial or social justice on behalf of historically disadvantaged communities, that person shall either be a resident of the City of Charlottesville or the organization they represent shall perform advocacy on behalf of City of Charlottesville residents.
- (5) No Board member shall be a current candidate for public office, a former member of the Department, an immediate family member of a current Department employee, or a current employee of a law enforcement agency, the Fire Department, the Emergency Communications Center, or the Sheriff's Office. If Council considers appointing a Board member who is employed by the City of Charlottesville, Council will seek to avoid potential conflicts of interest.

(c) **Terms.** Each Board member shall be appointed for a term of three years. Appointments and terms shall be subject to the provisions of City Code §2-8. The membership of the Board, and the terms of each board member, shall be the same as for the police civilian review board that was serving as of December 20, 2021, and that membership shall continue as the police civilian oversight board established by this article, with no change in the date of appointment, or length of term, for any member.

(d) **Conflicts of Interest.** No Board member may participate in any matter before the Board under circumstances in which the objectivity of the Board member could reasonably be questioned, including, without limitation, the consideration of a Complaint of someone who is a family member. For purposes of the Virginia State and Local Government Conflict of Interests Act, the Board shall be deemed a "governmental agency" and each Board member shall be an "officer", as those terms are defined in Virginia Code §2.2-3101. All Board members shall comply with the requirements of the Virginia State and Local Government Conflict of Interests Act.

(e) **Confidentiality.** Each member shall maintain the confidentiality of all confidential or privileged information, including but not limited to:

- (1) Materials from Police internal investigative files;

- (2) Disciplinary actions, memos and reports;
- (3) Statements of any police officer or civilian employee who was required by the Department to give a statement;
- (4) Criminal investigative files; or
- (5) Any other information that the Board has deemed confidential.

(f) **Records to remain Department records.** The Chief of Police, as the custodian of the original records of which copies may be provided to the Board by the Department, shall be responsible for decisions as to whether copies of such records (or information contained in such records) may be publicly disclosed, subject to the direction and control of the City Manager. Nothing in this paragraph shall preclude the City Manager from including with the Standard Operating Procedure required by §2-452 (e) guidelines for public disclosure of certain types of information contained with Department records. In the Standard Operating Procedure required by §2-452(e), the City Manager shall issue guidelines for what information may be included in Board reports or otherwise publicly disclosed.

## **Sec. 2-454. Meetings.**

(a) **Number of meetings.** The Board shall hold public meetings at least once per calendar quarter. Additional meetings may be called by the Chair or any two Board members.

(b) **FOIA.** The Board shall comply with all applicable requirements of the Virginia Freedom of Information Act (“FOIA”) pertaining to disclosure of public records and the conduct of its meetings, including the requirement that all meetings shall be open to the public except under circumstances when the topic is authorized by FOIA to be discussed in a closed meeting.

(c) **Quorum.** A quorum of the Board shall be four (4) members.

(d) **Minutes.** The Board shall keep minutes of its meetings, which shall include:

- (1) the date, time, and location of the meeting;
- (2) the members present and absent;
- (3) a summary of the discussion on matters proposed, deliberated, or decided;

and

(4) a record of any votes taken.

(e) **Rules and Procedures.** Meetings of the Board shall be conducted in accordance with Robert's Rules of Order or such other procedures as the Board may adopt. Hearings of the Board shall be conducted in accordance with the Operating Procedures approved by City Council for the Board.

## **Sec. 2-455 - Executive Director**

(a) **Appointment.** The City Manager shall appoint an Executive Director with the approval of a majority vote of the City Council.

(b) **Interview Process.** As a part of the Executive Director appointment process, the City Manager shall convene an interview panel that includes two members of the Board. If those two members recommend a candidate for appointment as Executive Director, the City Manager shall provide a written justification to the Board if a different candidate is appointed.

(c) **Duties.** The Executive Director shall support the Board in the implementation and exercise of all of its functions authorized under this ordinance and to undertake or ensure the performance of specific oversight tasks assigned by the Board, including the oversight of investigations conducted by the Department. If authorized by the City Manager or their designee, the Executive Director may engage the services of such investigators as may be necessary to perform the Executive Director's duties to conduct or to oversee investigations.

(d) **Supervision.** The City Manager shall supervise the work of the Executive Director and may delegate that responsibility to a Deputy City Manager. The City Manager's annual evaluation of the Executive Director's performance shall consider a written performance review submitted by the Board to the City Manager. The Board may request that the City Manager meet with the Board's Chair to discuss the Executive Director's performance.

(e) **Vacancy.** If there is a vacancy in the position of Executive Director, the City Manager or their designee may designate some other City employee who is not an employee of the Department to act as Executive Director until a new Executive Director is hired.

## **Sec. 2-456 - Board Legal Counsel.**

The Board may retain independent legal counsel to represent the Board in all cases, hearings, controversies, or matters involving the interests of the Board. Such independent legal counsel shall be chosen from a list of attorneys recommended by the



City Attorney. The Board's Chair is authorized to execute a contract in the name of the Board for legal services if the contract has first been approved by the Board and endorsed by the City's Finance Director to verify that funding is available and has been appropriated to support performance of the payment obligations of the Board under such contract. The Board's legal counsel shall be paid only from funds that have been appropriated to the Board's budget by City Council. The Board and the Executive Director are encouraged to consult the Office of the City Attorney for legal advice except in cases, hearings, investigations, controversies that are before the Board, or in any other matter in which the Board's and the Department's interests may conflict.

### **Sec. 2-457 – Matters that the Board May Investigate.**

(a) **Investigate Complaints.** The Board and the City Manager shall jointly develop and administer a process for receiving and investigating complaints from members of the public regarding the misconduct of law enforcement employees of the Department and referring complaints to the Department for investigation. The process, to be set out in detail in a Standard Operating Procedure established by the City Manager in consultation with the Chief of Police and the Executive Director, shall permit Complainants to file Complaints online, in writing, or orally. The SOP shall permit the Complainant to choose whether the Complaint will be investigated by the Board only or by the Department with the oversight of the Executive Director. Regardless of how a Complaint is received, it shall be promptly provided to the Department and to the Executive Director. The Executive Director, in consultation with the Board, may decline to investigate a Complaint.

(b) **Investigate Incidents.** If the Board becomes aware of an Incident, including the use of force by a law enforcement officer, death or serious injury to any individual held in custody, serious abuse of authority or misconduct as defined in this Article, an allegedly discriminatory stop, or another incident regarding the conduct of an employee of the Department, even if no Complaint has been filed, the Board may initiate its own investigation of the Incident, by notice from the Board Chair to the City Manager and the Chief of Police, who shall ensure the Department's cooperation with the investigation.

### **Sec. 2-458 - Investigations of both Complaints and Incidents.**

(a) **Compliance.** Any investigation shall comply with all federal, state, and local laws.

(b) **Compelled Statements.** The Board may not compel a statement from any Department employee.

(c) **Exclusions.** The Board shall not consider complaints, incidents, claims or issues involving the following:

- (1) Any incident that occurred more than one year before the filing of the Complaint (unless the Board with the concurrence of the City Manager determines that there is good cause to extend the filing deadline);
- (2) A matter that was the subject of an investigation where more than seventy-five (75) days has elapsed since the Department sent notice to the Complainant informing the Complainant that the Department's Internal Affairs investigation is complete (unless the Board determines that there is good cause to extend the filing deadline);
- (3) Matters that are the subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or a filed complaint), or any pending City of Charlottesville grievance proceeding;
- (4) Any financial management related issue;
- (5) Any complaint, incident, claim or issue where the Complainant requests that the Board not have access to their files;
- (6) Any complaint, incident, claim or issue that has previously been the subject of an investigation by the Board, unless substantial new information has come to the attention of the Board;
- (7) An allegation of misconduct only by employees of law enforcement agencies other than the Department. Such complaints should be referred to the appropriate law enforcement agency;
- (8) An allegation of conduct that does not violate the Charlottesville Police Policies and Guidelines, Disciplinary Orders, or Code of Conduct;
- (9) Any other claim outside the scope of the Board's authority expressly set forth within this Ordinance.

(d) **Exceptions to time limits.** The Board may review investigations beyond the time limits specified in subsections (c)(1) and (c)(2) if:

- (1) The board determines that there is good reason for doing so, or
- (2) As part of an audit taking place under Section 2-462(b).

(e) **Suspension of Investigations.** If a Complaint asserts criminal conduct by an employee of the Department, or if at any point in an investigation of a Complaint or Incident the Board becomes aware that an employee may have committed a criminal offense, the Board shall:

- (1) Suspend the investigation and notify the Chief of Police and Commonwealth's Attorney of the alleged conduct, ensuring that no statements obtained from the Police Department employee(s) whose actions are the subject of the matter are shared with criminal investigators or any prosecuting authority except in accordance with applicable law; and
- (2) Evaluate, in consultation with Board legal counsel, the City Attorney, and the Commonwealth's Attorney, whether competing public interests and civil rights involved permit the resumption of continued, parallel investigation by the Board.

**(f) Subpoenas.**

- (1) If the Board determines that there is evidence (including witnesses) not within the control of the Department that the Board is unable to obtain voluntarily, the Board by two-thirds vote may direct the Executive Director, on behalf of the Board, to apply to the Charlottesville Circuit Court for a subpoena compelling the attendance of such witness or the production of such books, papers, and other evidence, and the Court, on finding that the witness or evidence is material to the discharge of the Board's duties, may issue the requested subpoena.
- (2) If the Executive Director is denied access to material witnesses, records, books, papers, or other evidence within the control of the Department that the Executive Director deems necessary to perform their duties and the duties of the Board, the Executive Director may request the City Manager to require the Department to produce the requested witnesses and documents. The City Manager, or their designee, shall not unreasonably deny such a request, but may place conditions on the production of the requested witnesses and documents as necessary to preserve confidentiality for the reasons set forth in this ordinance. The City Manager, or their designee, shall issue a decision on the Executive Director's request within 5 business days from the date of that request.
- (3) If the City Manager, or their designee, denies the Executive Director's request made pursuant to subparagraph (2) above, the Board by two-thirds vote may direct the Executive Director, on behalf of the Board, to apply to the Charlottesville Circuit Court for a subpoena compelling the attendance of such witnesses or the production of such books, papers, and other evidence. The Court, on finding that the witness or evidence is material to the discharge of the Board's duties, shall cause the subpoena to be issued with such conditions as the Court may deem necessary to protect the Department's concerns about the need for confidentiality. The Board shall give the City Manager and the Department reasonable notice of its intent to subpoena such witness or records and shall give the City Attorney a copy of the request for subpoena. The Board shall not unreasonably

withhold its agreement to limitations on the scope of the subpoena requested by the City Manager that may be necessary to protect confidential information. The parties may request that any hearing to be held in the Circuit Court on the request for a subpoena be conducted in a closed courtroom, to the extent permitted by state law. Upon request, the court file for any such subpoena request shall be kept under seal to the extent permitted by state law.

- (4) If a subpoena is granted, the Board shall digitally record any interviews or depositions conducted pursuant to the subpoena and shall make copies of any documents obtained by subpoena. The Board shall provide the Department with copies of any such interview/deposition recordings and documents. The Board shall delegate its authority to subpoena and question witnesses to the Executive Director, who shall conduct any interviews, depositions, or questioning of witnesses in a non-public forum that adequately protects the privacy of the individual being subpoenaed, the confidentiality or sensitivity of information shared or sought, and the integrity of any pending or concurrent investigation.
- (5) In deciding whether, and under what conditions, the Circuit Court will issue any subpoena, the Court shall refer to procedures and caselaw decided under Rule 3A:12 of the Rules of the Supreme Court of Virginia.

**(g) Conduct of Investigations Pursuant to §2-457(a).**

- (1) If the Complainant asks that the Complaint be investigated by the Department, the Complaint will be investigated by the Department with oversight from the Executive Director. When the Department's investigation is concluded, the Department will provide the Complainant with an Investigative Report of its findings and the resolution of the Complaint and will provide the Board a summary of the Department's resolution of the Complaint.
- (2) The Executive Director may actively monitor all investigations of Complaints of employee misconduct conducted by the Department and shall have access to records and witnesses to the same extent as the Department, subject to the limitations or requirements set out in this Ordinance. Such oversight may include reviewing the investigative plan of the Department, reviewing with the Department any records within the Department's digital evidence management system, reviewing with the Department any pertinent law enforcement records within the Department's Records Management System, observing any and all real-time interviews of witnesses with the Department, reviewing all recorded interviews which the Executive Director chooses not to attend in real time, providing feedback during the interview to be relayed to Department staff conducting the interview, providing feedback to Department staff in

determining next steps in the investigative process, and reviewing facts gained from investigation with Department staff. For active investigations, the Executive Director shall be limited in their participation to the same extent the Department is limited in its participation in such investigations. The Executive Director may oversee the Department's administrative investigation of employee misconduct after the close of the active investigation in the same manner as all other investigations of employee conduct handled by the Department as described in this section. When monitoring Department investigations, during the pendency of the investigations the Executive Director shall not disclose information to the Board, any Board member, or any person other than as authorized in writing by the Chief of Police or the City Manager.

- (3) If the Complainant asks that the Complaint be investigated only by the Board, the Executive Director shall initiate an investigation on behalf of the Board. The Executive Director will provide the Chief of Police with enough identifying information to allow the Department to give the Executive Director access to information, records and witnesses as required by §2-452(e) and (f) of this Ordinance as may be relevant to the Complaint. When the Board's investigation is concluded, the Executive Director will provide the Board, the Complainant and the Department with an Investigative Report that includes a summary of the circumstances of the incident(s) of alleged misconduct, the evidence related to whether there was any misconduct, and any suggested findings related to each allegation.
- (4) Any investigation will be completed, and any Investigative Report will be submitted, within seventy-five (75) days from the date the Complaint is filed. The Board may extend the 75-day period upon request of the Police Chief or the Executive Director to protect an ongoing investigation or prosecution, or for other good cause, with notice to the Complainant and the City Manager.

**(h) Conduct of Investigations Pursuant to §2-457(b).** If the Board is investigating an Incident under the authority of §2-457(b), the Board may request information from the Department, may seek subpoenas as authorized above, and may conduct such an investigation as is necessary to permit the Board to prepare a Preliminary Investigative Report, making findings about whether there was any employee misconduct in the Incident under investigation. The Preliminary Investigative Report shall be provided to the Department and to any employees identified as having committed employee misconduct.

## **Sec. 2- 459 – Matters on which the Board may Conduct Hearings**

**(a) Review Request.** Within 75 business days of the issuance of any Investigative Report, the Complainant, or any member of the Board, may file a Review Request with

the Executive Director, asking that a hearing be held on the allegations in the Complaint. A Review Request shall be deemed filed when it is received by the Executive Director. In any Review Request reviewing a matter where the Complainant has not previously authorized Board involvement in the investigation, the Complainant must grant permission for the Board to have access to the Internal Affairs files and evidence if they wish to pursue a Review Request. The Board may conclude that no hearing, or a hearing only on a limited issue, is necessary on the Review Request. If so, the Board may issue a report without the need for a full hearing.

(b) **Hearing to be scheduled.** The Board may conclude that no hearing, or a hearing on only a limited issue, is necessary on the Review Request. If so, the Board may issue a report without the need of a full hearing. If the Board does choose to have a hearing on the Review Request, that hearing shall be held promptly. The hearing will be conducted pursuant to the Operating Procedures approved by City Council pursuant to §2-460(a).

(c) **Report on findings on Review Request.** Within 30 days of the hearing pursuant to a Review Request, the Board shall report publicly and to the City Manager, the Police Chief and the Complainant that it has made one of the following findings with respect to each allegation or issue under review:

- (1) That the Board finds that the investigation of the Complaint was satisfactory, and the Board concurs with the findings of the investigation;
- (2) That the Board finds that the investigation of the Complaint was satisfactory, but the Board does not concur with the findings of the investigation, in which case the Board may make recommendations to the City Manager concerning disposition of the Review Request; or
- (3) That the Board finds that the investigation is incomplete or otherwise unsatisfactory and provides a detailed written explanation of the basis for such finding.

(d) **Investigations in Support of Review Requests.** If the Board makes a finding under (c)(3), above, the Board may initiate an independent investigation of the matter. After the additional independent investigation, the Board shall report publicly that it has made one of the following findings with respect to each allegation or issue under review:

- (1) That the Board now finds that the investigation of the Complaint was satisfactory, and the Board concurs with the findings of the Investigative Report;
- (2) That the Board now finds that the investigation of the Complaint was satisfactory, but the Board does not concur with the findings of the Investigative Report, in which case the Board may make recommendations to the City Manager concerning disposition of the Complaint; or

- (3) That despite the Board's best efforts, the evidence is insufficient to allow the Board to determine whether the findings of the Investigative Report are correct.

(e) **Preliminary Investigative Report.** After receiving a Preliminary Investigative Report as provided in §2-458(h), the Board may hold a hearing on the allegations in the Preliminary Investigative Report. The Board shall report its findings within thirty (30) days of the hearing. The Board shall report publicly and to the City Manager and the Police Chief that it has made one of the following findings with respect to the Incident under review:

- (1) That the Board finds that a Department employee committed misconduct;
- (2) That the Board finds that no Department employee committed misconduct; or
- (3) That despite the Board's best efforts, the evidence is insufficient to allow the Board to determine whether any Department employee committed misconduct.

## **Sec. 2- 460. –Operating Procedures**

(a) **Operating Procedures.** The City Council shall approve Operating Procedures for the performance of duties by the Board. Those procedures may be amended from time to time by City Council, in consultation with the Board. The Board shall conduct all hearings in accordance with hearing procedures set forth within the Operating Procedures approved by City Council. A Hearing Examiner, chosen as set out in the Operating Procedures, shall preside over the hearing; however, the Board shall serve as the factfinding body. Parties to the hearing shall have no right to a particular set of procedures. The Hearing Examiner may make reasonable modifications to the procedures as circumstances concerning a particular Complaint may require, provided that (i) any such modifications are within the authority of the Board under this ordinance or the approved Operating Procedures; and (ii) no such modification deprives any party to a hearing of substantial justice.

(b) **Informal Resolution.** At any time after receiving a Complaint and before issuance of the written findings required at the conclusion of a hearing, the Board and any party may propose an informal resolution within the scope of the express authority granted to the Board within this Ordinance, which informal resolution may be adopted if all parties and the Board agree to such a resolution. At any time, the parties may agree to refer the matter to mediation or other alternative dispute resolution methods, without prejudice to the right to have a hearing on the Review Request.

## **Sec. 2-461. - Disciplinary Recommendations**

**(a) Prerequisite to the Board making disciplinary recommendations.** The Board shall be authorized to make disciplinary recommendations in a manner that protects personnel information regarding identifiable employees against public disclosure, in accordance with the Operating Procedures established by City Council pursuant to Sec. 2-460(a) and the Standard Operating Procedures established pursuant to Sec. 2-452(e). Subject to the foregoing provisions, the following process may be used, as appropriate:

- (1) Upon making a finding that an employee has engaged in a serious breach of departmental and professional standards, the Board shall meet to discuss appropriate recommendations for disciplinary action. The Board shall consult with the employee's direct supervisor or commander, complainants and witnesses when discussing the appropriate disciplinary action to be recommended. Prior to commencement of any such disciplinary deliberations, the subject employee shall be given notice of the proceedings and of the range of disciplinary actions under consideration, and the employee shall be offered an opportunity to be heard. If permitted by FOIA, some or all of the disciplinary hearing may be held in closed session. No employee, and no other City employee, shall be compelled to provide statements to the Board during its deliberations. Disciplinary action to be considered for recommendation by the Board shall include those specified within any applicable disciplinary matrix utilized by the Department. After considering these sources of information, the Board may make a disciplinary recommendation to the Department.
- (2) If the Board makes a disciplinary recommendation to the Department, and the Department declines to implement the Board's disciplinary recommendations, the Chief of Police shall, within thirty (30) days of the Board's recommendation, provide a written explanation of their reason for declining to implement the Board's recommendation. This explanation shall be made available to the Board, the City Council, the City Manager, and the public.

**(b) Grievance rights.** Nothing in this ordinance shall affect in any way any right of an employee to file a grievance requesting a hearing before the City's Personnel Appeals Board, which right shall be governed by the provisions of Sections §9.01-507 and 9.1-601(F) of the Virginia Code, or the provisions of Va. Code §15.2-1507(A)(3) and the City's employee grievance procedures, as may be applicable. No finding by the Board, nor any recommendation of the Board, shall be admitted in any personnel appeal or grievance hearing.



## **Sec. 2- 462. - Board Review of Law Enforcement Policies, Practices and Procedures**

(a) **Authority to make policy recommendations.** The Board may review and make recommendations regarding policies, practices, and procedures of the Department, including written policies, procedures and standing orders. The Board shall present in writing its findings and recommendations with supporting rationale to the City Manager and Chief of Police. If the Department declines to implement any changes recommended by the Board, the Chief of Police shall explain in writing, which shall be made available for public inspection, why the Department declines to implement the Board's recommendation, unless the Board instead withdraws the recommendation based on the rationale provided. The Board's withdrawal of any such recommendation shall be made available for public inspection.

(b) **Executive Director's authority to conduct audits.** The Board may direct the Executive Director on its behalf to conduct retrospective examinations and audits of patterns in Internal Affairs investigations, arrest and detention, and other public-police interactions. The Board may request information from the Department, may seek subpoenas as authorized above, and may conduct such an investigation as is necessary to permit the Board to perform the audit.

## **Sec. 2- 463. - Request Annual Reports of Police Expenditures**

During the City Manager's preparation of a proposed City budget, the Budget Office shall provide the Board with annual expenditure estimates and future year projections for the Department, itemized to the same level of detail as provided to the City Manager. The estimates shall be presented to the Board at the same time they are presented to the City Manager. The Board may review the estimates and may make budgetary recommendations to the City Manager and/or to the City Council during the annual budget process.

## **Sec. 2-464. - Legislative Recommendations and Annual Report.**

(a) **Legislative recommendations.** The Board may make recommendations to City Council of any proposed changes in state law, for the Council's consideration to include in its annual legislative program to present to the General Assembly. These recommendations shall be presented to the City Attorney's Office by August 15 of each year.

(b) **Annual Report.** On or before April 15 of each calendar year, the Board shall provide the City Council with an annual report of activities conducted during the preceding calendar year. The report shall detail the Board's activities in the prior calendar year, with sections related to the appointment of committees and their actions; the establishment of any community advisory panels; an overview of complaints received during the calendar year including the number of complaints, the complaints' findings, and the number of complaints deferred due to pending proceedings; the number and outcome of any independent investigations; an overview of proposed policy recommendations and amendments to Department policies and whether the recommendations and amendments were implemented by the Department; the number, type, and attendance at community listening sessions; recommendations of the Board about policing within the City; and any other information necessary to provide an overview of the Board's activities.

## **Section 2-465. - Community Engagement and Community Relations**

(a) **Community Outreach.** The Board and the Executive Director shall engage in community outreach to seek the assistance and input of community members. At least twice a year, the Board shall host public community listening sessions to discuss policing matters of pressing public concern, including the impacts of local policing on historically disadvantaged communities that currently experience or traditionally have experienced disparate policing.

(b) **Community meetings.** The Board may also host or participate in public police-community relations meetings, in which Board members, supported by the Executive Director, Department officials, designated by the Chief of Police, and community members discuss policing matters of pressing public concern, including questions about transparency, availability, legitimacy, mutual respect and trust, equitable treatment, social and racial justice, equal rights, and community safety and order.

(c) **Include in reports.** The Board shall report on its community outreach and engagement activities, public input, and any recommendations for community-policing initiatives or for improved police-community relations at least annually as part of the annual report provided for in Section 2-464(b).

## **Section 2-466. - Training**

(a) **NACOLE training.** At least once every two years, and within 90 days of any new Board appointments, the City, assisted by the Executive Director, shall provide Board members with at least eight hours of training, presented by the National Association for Civilian Oversight of Law Enforcement or a comparable professional organization. The training shall be consistent with the Board's mission, this ordinance, and the Operating Procedures.

(b) **City or CPD training.** At least once every two years, and within six months of any new Board appointments, the City, assisted by the Executive Director and the Chief of Police or their designees, shall provide Board members with training or information:

- (1) Describing the legal and ethical obligations of members of a public board, including the need to comply with FOIA and other statutes and ordinances governing their service;
- (2) Explaining Police Department procedures, policies, and regulations;
- (3) Describing the substance of Police Department personnel record-keeping;
- (4) Describing such other City policies, procedures and systems relevant to the duties of the Board; and
- (5) Explaining the Code of Ethics for the Board.

(c) **Ride-alongs.** Within six months of appointment, and at least once a year thereafter, members shall participate in a ride-along session with the Department.

(d) **Additional training.** As needed, the City shall provide Board members with additional relevant training by subject matter experts on subjects that may include mental health, trauma-informed policing, civil rights and constitutional law, race and racism, community outreach, mediation, investigation, and policing practices.

### **Section 2-467. – Commendations for Exceptional Community Service**

(a) **Soliciting public comment.** The Board may solicit comments from the public concerning incidents of exceptional performance by employees of the Department.

(b) **Exemplary employees.** The Board may consult with the Chief of Police regarding individual employees who have made outstanding contributions exemplary of equitable, just, and professional policing.

(c) **Recognition of outstanding contributions.** The Board may issue public citations recognizing individuals deemed to have made such contributions.

### **Section 2-468. – Mediation**

The Board may propose procedures for the use of mediation or other alternative dispute resolution techniques to resolve complaints against employees of the Department. Such procedures shall not affect the ability of Complainants to pursue remedies under other sections of this ordinance.

CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	December 6, 2021
Action Requested:	Consideration of a Rezoning Application
Presenter:	Matt Alfele, AICP, City Planner
Staff Contacts:	Matt Alfele, AICP, City Planner
<b>Title:</b>	<b>0 Nassau Street. – ZM21-00002</b>

**Background:**

Justin Shimp (Shimp Engineering, P.C.) and Nicole Scro representing the owner, Franklin Street Land Trust III, has submitted a Rezoning Application pursuant to City Code Sec. 34-41 seeking a zoning map amendment to change the zoning district classification of Tax Map and Parcels 610079600, 610079700, and a portion of 610079000 (Subject Properties). The application proposes to change the zoning classification of the Subject Properties from the existing R-2 (Residential Two-Family) to R-3 (Residential Multifamily) with proffers and a development plan. The proposed development plan indicates 2 multifamily buildings with 5 units in each building for a total of 10 units on the Subject Properties. The proposed density will be 19.4 dwelling units per acre (DUA). The Subject Property is approximately 0.51 acres with frontage on Nassau Street. The Comprehensive Land Use Map for this area calls for Low Density Residential. See Attachment A for proffered conditions

**Discussion:**

The Planning Commission held a virtual joint Public Hearing with City Council on November 9, 2021 on this matter. Floodplain impacts, accessibility of the playground to the community, and size of the units were all discussion points from the Planning Commission and City Council. The Commission wanted to ensure the proposed development would meet all floodplain requirements and wanted clarification on who could use the playground and greenhouse.

**Alignment with City Council's Vision and Strategic Plan:**

If City Council approves the rezoning request, the project could contribute to *Goal 3: A Beautiful and Sustainable Natural and Built Environment, 3.1 Engage in robust and context sensitive urban planning and implementation*, and the City Council Vision of *Quality Housing Opportunities for All*.

**Community Engagement:**

On September 9, 2021 the applicant held a community meeting on Zoom from 6:30pm to 7pm. No members of the public attended the meeting. The meeting was recorded and is available to the public through the developer.

On November 9, 2021 the Planning Commission held a virtual joint Public Hearing with City Council. two (2) members of the public spoke and expressed the following:

- The City should not allow development within the floodplain and should do more to protect the trees.
- The City needs more housing and this development would benefit the City.

Any emails received by staff regarding this project have been forwarded to Planning Commission and City Council.

**Budgetary Impact:**

This has no impact on the General Fund.

**Recommendations:**

The Planning Commission took the following action:

**Rezoning Application (ZM21-00002)**

Ms. Russell moved to recommend approval of this application to rezone the Subject Properties from R-2, to R-3, on the basis that the proposal would service the interests of the general public and good zoning practice.

Mr. Mitchell seconded the motion

- Ms. Dowell, Yes
- Mr. Lahendro, Yes
- Mr. Solla-Yates, Yes
- Mr. Stolzenberg, Yes
- Mr. Habbab, Yes
- Mr. Mitchell, Yes
- Ms. Russell, Yes

The motion passed 7 - 0 to recommend approval of the rezoning application to City Council.

**Alternatives:**

City Council has several alternatives:

- (1) by motion, take action to approve the attached ordinance granting the Rezoning as recommended by Planning Commission;
- (2) by motion, request changes to the attached ordinance and then approve the Rezoning;
- (3) by motion, take action to deny the Rezoning; or
- (4) by motion, defer action on the Rezoning.

**Attachments:**

- A. Signed Proffer Statement
- B. Rezoning Ordinance
- C. Link to the Public Hearing materials.

<https://charlottesvilleva.civicclerk.com/Web/Player.aspx?id=1286&key=-1&mod=-1&mk=-1&nov=0>

(Materials start on page 5)

Original Proffers     X      
Amendment                     

**PROFFER STATEMENT**

Rezoning: 0 Nassau Street  
Tax Map Parcels: 610079000 (portion of), 610079700, and 610079600

Owner: Franklin Street Land Trust III, Justin M. Shimp, Trustee  
912 East High Street  
Charlottesville, VA 22902

Date of Proffer Signature: November 10, 2021  
Subject properties to be rezoned from R-2 to R-3

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Franklin Street Land Trust III is the owner (the “Owner”) of Tax Map Parcels 610079000, 610079700, and 610079600 (collectively, the “Property”), located in the City of Charlottesville, Virginia. The Property is the subject of rezoning application ZM21-00002 to allow for the development of a project known as “0 Nassau Street” (the “Project”).

Pursuant to Division 4 of the City of Charlottesville Zoning Ordinance (Chapter 34 of the City of Charlottesville Code), the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the Property if it is rezoned to the requested zoning district, R-3. These conditions are proffered as part of the requested rezoning and the Owner acknowledges that the conditions are reasonable. Each signatory below signing on behalf of the Owner covenant and warrant that it is authorized signatory of the Owner for this Proffer Statement.

1. **DESIGN:** The design, height, density, and other substantive characteristics of the Project shall remain essentially the same, in all material aspects, as described within the application materials submitted to the City on July 16, 2021, including, but not limited to, the Conceptual Site Plan, dated July 10, 2021, prepared by Shimp Engineering, P.C. Except that the characteristics of the Project may subsequently be modified to comply with City zoning regulations not modified by this application, any other material change of the Project as represented within the application materials shall require a modification of this rezoning application.
2. **HEIGHT OF BUILDINGS AND STRUCTURES:** any buildings and structures located on the Property shall not exceed thirty-five (35) feet in height. (Height is to be measured in accordance with City Code Section 34-1110 in effect as of the date this ordinance, which specifies that height, when applied to a building or structure, shall refer to the

vertical distance measured perpendicularly from grade to the highest point on such building or structure.)

### 3. LAND USES

- a. **Permitted Uses**: the Property may be used only for the following. Any uses other than those listed below shall be prohibited:
  - i. Residential and related uses.
    1. By-right: single-family detached, single-family attached, townhome, two-family, accessory buildings, structures and uses; multifamily dwellings; residential treatment facility (1-8 residents); 1-21 dwelling units per acre (DUA).
    2. With a provision use permit: home occupations.
  - ii. Other uses.
    1. By-right: utilities;
    2. By special use permit: utility facilities.

The undersigned Owner hereby proffers that the use and development of the Property shall be in conformance with the proffers and conditions herein above. This document shall supersede all other agreements, proffers, or conditions that may be found to be in conflict. The Owner agrees that all proffers shall be binding to the Property, which means the proffers shall be transferred to all future property successors of the land.

[Signature Page Immediately Follows]



WITNESS the following duly authorized signatures and seals:

**OWNER:**

Franklin Street Land Trust III

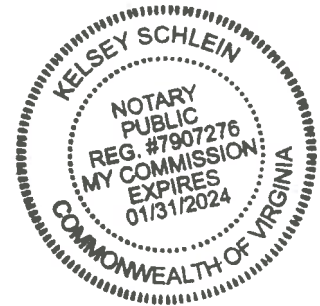
By: [Signature]  
Justin M. Shimp, Trustee

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Charlottesville, to wit:

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of November, 2021  
by Justin M. Shimp, Trustee of Franklin Street Land Trust III, on its behalf.

My Commission expires: 01/31/2024

[Signature]  
Notary Public



**AN ORDINANCE  
APPROVING A REZONING OF LAND FRONTING ON NASSAU STREET  
FROM R-2U (TWO-FAMILY RESIDENTIAL, UNIVERSITY)  
TO R-3 (MULTIFAMILY RESIDENTIAL) SUBJECT TO PROFFERED DEVELOPMENT  
CONDITIONS**

**WHEREAS**, in order to facilitate a specific development project, Franklin Street Land Trust III (“Landowner”), by its representative, Justin Shimp, has submitted rezoning application ZM21-00002, proposing a change in the zoning classification (“Rezoning”) of certain land fronting on Nassau Street, identified within the City’s 2021 real estate tax assessment records by Real Estate Parcel Identification Nos. 610079600, 610079700, and a portion of 610079000, each currently addressed as 0 Nassau Street (collectively, the “Subject Property”), from “R-2U” to “R-3”, with said rezoning to be subject to several development conditions proffered by Landowner; and

**WHEREAS**, the purpose of the Rezoning is to allow a specific development project identified within the application materials for ZM21-00002, which materials describe a plan to establish multifamily residential dwellings within the Subject Property (the “Project”); and

**WHEREAS**, a joint public hearing on the proposed Rezoning was conducted by the Planning Commission and City Council on November 9, 2021, following notice to the public and to adjacent property owners, as required by law, and following the joint public hearing, the Planning Commission voted on November 9, 2021 to recommend that City Council should approve the Rezoning; and

**WHEREAS**, this City Council has considered the details of the specific Project represented within the Landowner’s application materials for ZM21-00002; and has reviewed the NDS Staff Report, public comments, the Planning Commission’s recommendation, and the Comprehensive Plan; and

**WHEREAS**, this Council finds and determines that the public necessity, convenience, general welfare and good zoning practice require the proposed rezoning; that both the existing zoning classification and the proposed zoning classification are reasonable; and that the proposed Rezoning is consistent with the Comprehensive Plan; now, therefore,

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia that the Zoning District Map Incorporated in Section 34-1 of the Zoning Ordinance of the Code of the City of Charlottesville, 1990, as amended, be and hereby is amended and reenacted as follows:

*Section 34-1. Zoning District Map.* Rezoning all of the land identified within the City’s 2021 real estate assessment records by Real Estate Parcel Identification Numbers 610079600, 610079700, and a portion of 610079000 (“Subject Property”), containing, in the aggregate approximately 0.51 acres (approximately 22,215 square feet), from R-2 (Two Family Residential) to R-3 (Multifamily Residential), subject to proffered development conditions (“Proffers”) which were tendered by the Landowner in accordance with law and are hereby accepted by this City Council as set out below within this ordinance.

### Approved Proffers

The use and development of the Subject Property shall be subject to and in accordance with the following development conditions voluntarily proffered by the Landowner, which conditions shall constitute zoning regulations which apply to the Subject Property in addition to the regulations otherwise provided within the City's zoning ordinance:

1. **DESIGN:** The design, height, density, and other substantive characteristics of the Project shall remain essentially the same, in all material aspects, as described within the application materials for ZM21-00002 submitted to the City on July 16, 2021, including, but not limited to, the Conceptual Site Plan, dated July 10, 2021, prepared by Shimp Engineering, P.C. Nothing within this condition shall preclude a subsequent modification of characteristics of the Project when necessary to comply with City zoning regulations other than those set out within these proffered conditions; however, any other material change of the Project as represented within the application materials shall require an amendment of this Ordinance.

2. **HEIGHT OF BUILDINGS AND STRUCTURES:** Any buildings or structures located on the Subject Property shall not exceed thirty-five (35) feet in height. Height is to be measured in accordance with City Code Section 34-1110 in effect as of the date of this Ordinance, which specifies that height, when applied to a building or structure, shall refer to the vertical distance measured perpendicularly from grade to the highest point on such building or structure.

3. **Permitted Uses:** The Subject Property may be used only for the uses listed below; any uses other than those listed below shall be prohibited:

a. Residential and related uses.

1. By-right: residential dwellings, at a density of one (1) to twenty-one (21) dwelling units per acre within area of the Subject Property, specifically: single-family detached dwellings, single-family attached dwellings, townhouses, two-family dwellings, multifamily dwellings, or residential treatment facilities (1-8 residents),
2. By right: accessory buildings, structures and uses, and
3. With a provisional use permit: home occupations.

b. Other Uses

1. By-right: utility lines;
2. By special use permit: utility facilities.

**BE IT FURTHER ORDAINED THAT** the City's Zoning Administrator shall update the Zoning District Map referenced in City Code §34-1, to reflect this rezoning of the Subject Property subject to the proffered development conditions.

CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	<b>December 20, 2021</b>
Action Required:	Approval of Resolution (1 Reading)
Presenter:	Ashley Marshall, Deputy City Manager
Staff Contacts:	Ashley Marshall, Deputy City Manager Lisa Robertson, City Attorney
<b>Title:</b>	<b>Resolution Approving Final Disposition of the LCS Statue</b>

**Background:**

In July 2021 the City removed the outdoor public sculpture titled “Their First View of the Pacific”, by sculptor Charles Keck (the “Sculpture”) from a location within the West Main Street right of way at which the Sculpture had been located since the 1920s. Since removal the Sculpture has been stored at Darden Towe Park.

Darden Towe Park is owned jointly by the City of Charlottesville and the County of Albemarle. A portion of the Park, at its northern end along the Rivanna River, is leased to the Lewis and Clark Exploratory Center, Inc., for a term that runs through June 30, 3043. The lease allows the Center to use the premises as an “historical center”, and also to make improvements and place signage on the property with the agreement/ approval of the City and County. The City’s agreement/approval would be reflected in its decision to donate the Sculpture to the Center; the County’s agreement will necessarily be reflected in its decision on any site plan application required to be submitted to and approved by the County (as stated in the Center’s Proposal).

On July 25 2017 the City and Albemarle County entered into an updated “Darden Towe Park Agreement” to provide a “fair and equitable allocation of responsibility between the two localities for the planning, development, operation and maintenance of the park.” The Park is administered as a county park under the Albemarle County Code. The County provides “fiscal” as well as legal services for the operation of the park, and receives from the City two percent (2%) of the park’s total operating budget, billed to the City on a quarterly basis. The Agreement provides that two members of City Council will sit on a Park Committee, that offers advice and direction on park management, capital improvements, and long range planning. The Agreement does not mention the lease to the Center.

**Discussion:**

Earlier in 2021 the City publicly advertised that it was inviting proposals from persons interested in acquiring ownership of the Sculpture. Among those proposals was an offer from The Lewis and Clark Exploratory Center, Inc., a charitable institution or organization organized under the laws of the Commonwealth of Virginia (the “Center”). The mission of the Center is to commemorate and educate the public about the historical event known as the Lewis and Clark Expedition. The Center

submitted a proposal to the City, requesting a donation of the Sculpture.

One outstanding question is how City Council might make provisions within this gift to ensure that descendants of Sacajawea/members of the Lemhi Shoshone tribe, will have an ongoing, permanent voice in matters as to how Sacajawea's role and contributions to the Expedition will be contextualized by the Center. Attached Resolution #1 addresses this issue by saying that the donation won't become effective until the descendants/tribe confirm their satisfaction with the initial contextualization. Later, if the Sculpture is proposed to be removed from Darden Towe Park, the City would have an option to reacquire ownership and could control the context of the next site in that manner.

On December 6, 2021 City Council indicated its interest in the Center's proposal, but requested staff to consider mechanisms by which the recontextualization of the Sculpture, and more specifically, the depiction of Sacajawea, would be enforceable not only as to the Center, but to the Center's heirs, successors and assigns. The City Attorney advised that, while it is possible to effect a donation of property to a charitable institution subject to conditions, it can be difficult to create clear conditions that can be and remain enforceable over a long period of time. One arrangement the City Attorney was requested to consider was the possibility of a lease of the Sculpture. The attached Resolution #1 has been drafted to ensure that, until the Sculpture has been placed in the location where it will remain for the long term, the Sculpture will be leased to the Center. If contextualization has not been established in accordance with the representations within the Center's offer within a period of five years, then the City will have the ability to terminate the lease and make a different disposition of the Sculpture.

The Center's Proposal states that "*Our Re-contextualization Plan will be made binding into the future, and to our heirs, successors and assigns, **through the means that the City of Charlottesville City Council prefers.** We can sign an agreement, such as a Resolution, accompanying the transfer of property that outlines the priorities and vision statement of the re-contextualization plan: that Sacagawea be respected as a full partner in the Expedition, that her contributions be celebrated, and that the statue be depicted within its historical context. We could make those same provisos mandatory for any future property sale. As with any nonprofit, in the case of dissolution, the Internal Revenue Service asks that property be dispersed to similar nonprofits. We could require that the sale or transfer be to a non-profit of similar mission who will agree to the provisos.*" However, the Proposal outlines those things in broad-brush format, and—other than to verify the offered contextualization when initially established and later, upon a sale or removal—it is unclear to staff what additional conditions of the donation would satisfy a desire of Council to both have ongoing control of the Sculpture itself and accomplish a permanent voice in the Center's programs between the time of installation and the time of a future sale/ removal. While it's possible to develop a dispositional alternative along those lines, that type of disposition is different than what's proposed within the Center's Proposal.

**Budgetary Impact:**

None.

**Alternatives:**

- (i) City Council could retain ownership of the Sculpture,
- (ii) City Council could enact the attached Resolution #1 (with or without amendments)

If Council wishes to amend the attached Resolution #1 to include one or more conditions as to how (other than having an option to reacquire the Sculpture before a planned relocation) the descendants of Sacajawea could be given an ongoing, permanent voice in how Sacajawea's role and contributions to the Expedition will be contextualized, staff will need additional guidance from Council. Roseann Abrahamson has communicated some desired language for Council's consideration, see attached. However, as a practical matter, that desired language doesn't specify *how* the desired relationship and collaboration would occur. As of the time this agenda memo is written, staff does not have a clear sense of whether there is a consensus among councilors on this/these issues.

Amendments can be made by motion (for example "I move to amend Resolution #1 to include a requirement that \_\_\_\_\_")

(iii) City Council could donate the Sculpture to the Center without any conditions (Resolution #2), or

(iv) City Council could decide upon some other disposition, different than proposed within the Center's Offer/Proposal.

For example: one councilor is proposing to convey group or shared ownership of the Sculpture to the Center and to the descendants of Sacajawea/ members of the Lemhi Shoshone tribe. This is a potential disposition that is legally possible, but that is not set out within any of the offers received by Council to date. Additional details would be necessary, such as the legal names of the descendants intended to share ownership and/or the legal name of the tribal entity that could hold "title" to personal property, and confirmation of whether the Center would/ could accept title under that type of arrangement.

**Community Engagement:** yes. City Council conducted a public work session in November 2019 to discuss the Sculpture, and City Council received input regarding the Sculpture and its possible disposition from representatives of the Shoshone and Monacan tribes, including lineal descendants of Sacajawea.

**Alignment with Council Vision Areas and Strategic Plan:** Yes.

**Attachments:**

- Resolution #1 (proposed deed of gift with conditions)
- Alternate Resolution #2 (donation without conditions)
- Lewis and Clark Exploratory Center's Offer/Proposal
- Email dated December 12, 2021 from Roseann Abrahamson to Mayor Walker and Council

**Resolution #1 for Consideration (donation subject to restrictions)**

**RESOLUTION  
APPROVING A DONATION OF THE CITY-OWNED SCULPTURE TITLED “THEIR  
FIRST VIEW OF THE PACIFIC”, A/K/A THE LEWIS AND CLARK/ SACAJAWEA  
STATUE, TO THE LEWIS AND CLARK EXPLORATORY CENTER OF VIRGINIA,  
INC.**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE that a donation of the City-owned sculpture titled “Their First View of the Pacific” (also commonly referred to as the Lewis and Clark/ Sacajawea Statue) is hereby donated to the Lewis and Clark Exploratory Center of Virginia, Inc., in accordance with the provisions of Virginia Code §15.2-953 and subject to conditions set forth within a deed of gift, as follows:

**DEED OF GIFT**

THIS DEED OF GIFT is made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Charlottesville, Virginia (“Donor”) and The Lewis and Clark Exploratory Center of Virginia, Inc. (the “Center”), a nonprofit charitable educational organization established under the laws of the Commonwealth of Virginia, a nonstock corporation that is exempt from federal taxation as a “501(c)(3)” organization under federal Internal Revenue Service regulations.

WHEREAS the Donor desires to dispose of an outdoor bronze sculpture titled “Their First View of the Pacific”, by sculptor Charles Keck, along with the original base upon which the sculpture was erected (“Sculpture”), by donating the Sculpture to the Center for use as public art; and

WHEREAS the Center’s actions, including acceptance of donations and dispositions of its property, must be in furtherance of its mission, as articulated in the Center’s Articles of Incorporation (2000); and

WHEREAS the Center has made certain representations to the Donor as to how certain matters depicted by the Sculpture will be contextualized, to include an authentic portrayal of Sacajawea’s leading role during the Expedition, and those representations are more specifically set forth within an “offer” presented to the Charlottesville City Council dated August 25, 2021, attached as **Schedule 1** to this Agreement; and

WHEREAS the Center has represented to the Donor that its plan for recontextualizing Sacajawea’s role and contributions to the Expedition will be made binding into the future, as to the Center and its heirs, successors and assigns, through means that the Charlottesville City Council prefers; and

WHEREAS the Charlottesville City Council desires that descendants of Sacajawea, members of the Lemhi Shoshone tribe, will have an ongoing, permanent voice in matters as to how Sacajawea’s role and contributions to the Expedition will be contextualized by the Center;

NOW, THEREFORE, in consideration of the mutual premises, representations and warranties set forth herein:

1. The Sculpture is donated by the Donor to the Center for use as publicly displayed art (“Donation”). The Center shall install the Sculpture upon land within Darden Towe Park (“Project”), as a permanent fixture within the park jointly owned by the City of Charlottesville and the County of Albemarle, Virginia where the Lewis and Clark Exploratory Center has been established.

2. By its acceptance of the donation, the Center agrees that, in the event the Center is considering removal of the Sculpture from Darden Towe Park for installation at a different location (either itself, or by a possible conveyance of the Sculpture to a third party), the Charlottesville City Council shall be given sixty (60) days’ advance written notice of the possible relocation, and the City Council have the right, at its sole discretion, to reacquire ownership of the Sculpture—either (i) by sale from the Center to the City, at a monetary compensation less than or equal to the Center’s documented costs of the original installation of the Sculpture within Darden Towe Park, or (ii) by donation to the City at the Center’s option.

3. The Center, in accepting the donated Sculpture, has made no determination of the value of the Sculpture. The Donor, in making the donation, makes no representations or assurances of the value of the Sculpture, for tax purposes or otherwise.

4. The Donation shall be and become effective, and all of the Donor’s right, title and interest in and to the Sculpture shall be vested in the Center, as of the date on which all of the following have occurred:

- a. The Center has removed the base of the Sculpture from its present location within the West Main Street right of way and has relocated the base to the site of the Lewis and Clark Exploratory Center within Darden Towe Park, at the Center’s sole cost and expense; and
- b. The Center has received written confirmation from the Charlottesville City Council that the proposed design and plan for the initial installation, orientation, and signage that will be part of the physical contextualization of the Sculpture within Darden Towe Park incorporates Lemhi Shoshone guidance based on their knowledge and preferences and otherwise carries out the representations set forth within the Center’s August 25, 2021, Proposal to the City; and
- c. the County of Albemarle, Virginia has approved a final site plan for the permanent installation of the Sculpture, base and supporting concrete slab(s), and has granted any other zoning approvals required for the Project. The Center shall provide documentation of the County’s final site plan approval to the Clerk of City Council.

Upon request by the Center, the Charlottesville City Manager shall provide written verification of the date as of which all of the foregoing requirements were satisfied (“Date of Conveyance”).

5. Prior to the Date of Conveyance, the Center shall have the exclusive right of possession and control of the Sculpture, and the Sculpture, together with its original base, is hereby leased to the Center for a term of one year, at an annual rent of one dollar (\$1.00) per year, effective as of the date on which City Council approves this Resolution (“Lease Commencement Date”). The term of this lease shall automatically renew from year to year



thereafter but shall automatically expire on the Date of Conveyance. This lease may be terminated: (i) by the Center, at any time prior to the Date of Conveyance, after first giving sixty (60) days' advance written notice of termination to the Donor, or (ii) by the Donor, if all of the requirements of Paragraph 4, above, are not satisfied within five (5) years of the Lease Commencement Date, after first giving ninety (90) days' advance written notice of termination to the Center. Upon the effective date of a termination by a party pursuant to (i) or (ii), above, the Donor shall have a right to sell or otherwise dispose of the Sculpture as deemed by the City Council to be in the Donor's best interests. Any such sale or other disposition shall be without liability, of any nature whatsoever, to the Center. During all times at which the lease is in effect, the Center shall be solely responsible for the Sculpture, and assumes all risk of loss, by casualty or otherwise.

6. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Deed of Gift but this Deed of Gift shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein and the same shall be enforceable to the fullest extent permitted by law.

7. The parties hereto agree to execute and deliver any additional document that may be reasonably required to complete and execute the responsibilities of the parties as set forth herein.

BE IT FURTHER RESOLVED that the City Attorney is authorized to prepare the above-referenced Deed of Gift in a form suitable for execution by duly authorized agents of the Donor and the Center, and by its approval of this resolution the Council of the City of Charlottesville hereby authorizes its Mayor to execute the Deed of Gift on behalf of the City.

[signature blocks will be inserted here]

I, Kyna Thomas, do hereby certify that the foregoing document is a true, correct copy of a resolution duly adopted by the City Council of the City of Charlottesville, Virginia, by a vote as recorded below, at a regular meeting held on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Clerk of Council, City of Charlottesville

	<u>Aye</u>	<u>Nay</u>
Mayor Walker	_____	_____
Vice Mayor Magill	_____	_____
Councilor Hill	_____	_____
Councilor Payne	_____	_____
Councilor Snook	_____	_____

**Resolution #2 for Consideration (no conditions)**

**RESOLUTION  
APPROVING A DONATION OF THE CITY-OWNED SCULPTURE TITLED “THEIR  
FIRST VIEW OF THE PACIFIC”, A/K/A THE LEWIS AND CLARK/ SACAJAWEA  
STATUE, TO THE LEWIS AND CLARK EXPLORATORY CENTER OF VIRGINIA,  
INC.**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE that the City-owned sculpture titled “Their First View of the Pacific”, also known as the Lewis and Clark/ Sacajawea Statue, is hereby donated, and ownership transferred, to the Lewis and Clark Exploratory Center of Virginia, Inc., a charitable institution or organization, in accordance with the provisions of Virginia Code §15.2-953.

I, Kyna Thomas, do hereby certify that the foregoing document is a true, correct copy of a resolution duly adopted by the City Council of the City of Charlottesville, Virginia, by a vote as recorded below, at a regular meeting held on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Clerk of Council, City of Charlottesville

	<u>Aye</u>	<u>Nay</u>
Mayor Walker	_____	_____
Vice Mayor Magill	_____	_____
Councilor Hill	_____	_____
Councilor Payne	_____	_____
Councilor Snook	_____	_____

Letter of Transmittal

SACAGAWEA STATUE OFFER

From: Lewis & Clark Exploratory Center

Mailing Address: P. O. Box 281

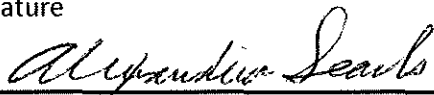
Charlottesville, Virginia 22902

Physical Address: 1490 Darden Towe Park

Charlottesville, Virginia 22911

Date: August 25, 2021

Signature



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Alexandria Searls

Executive Director

This offer is confirmed as being valid for a period of 120 days from the date of the offer.

The Lewis & Clark Exploratory Center of Virginia, Inc. seeks to acquire ownership of "Their First View of the Pacific," by sculptor Charles Keck, which depicts the 19<sup>th</sup> Century explorers, Lewis and Clark, and their Native American partner, Sacagawea. We seek to acquire both the statue and the base. We thank City Council for allowing us this opportunity to make our case for the statue, and we will detail in this offer our plan for re-contextualization of the statue, emphasizing Sacagawea's leadership, pivotal knowledge, and significant contributions, including saving the lives of Expedition members through her wayfinding and her reunion and discussions with her brother, rescuing journals and scientific projects, and serving as a messenger of peace.

We offer the following detailed terms for our acquisition and removal/relocation of the statue. With the help of many local donors, showing community support for the statue remaining in Charlottesville, and also with the support of national foundations and out-of-town donors, including indigenous donors and donors with indigenous family members, we have raised the full amount necessary for the removal of the base and its associated costs. We have received an estimate from Theresa Matyiko of Expert House Movers of \$45,000 to \$65,000 to move the base to Darden Towe Park, with the understanding that complications at the Main Street/Ridge-McIntire intersection might increase that amount. We currently have \$90,000 at our disposal in signed pledges. Upon selection, we would initiate a public campaign for additional funds for interpretive signage and other costs of re-contextualization. Expert House Movers is fully bonded and is a 70-year-old business with extensive historical preservation/transport experience. They visited the site and the base and they also visited Darden Towe Park to assess the distance and requirements.

The time frame would be at the City of Charlottesville's request. There is a site plan requirement for the permanent installation of the statue, base, and a supporting concrete slab at Darden Towe Park, but the base could be moved for storage on site and the site plan process begun afterwards, if that is your decision and the decision of the County of Albemarle, the other co-owner of Darden Towe Park.

It is the hope of the Lewis & Clark Exploratory Center to display that base and the statue separately, though next to each other, for reasons we'll outline. To that end, we have received a quote for a modest base for the statue from the stone manufacturer of UVA's Memorial to Enslaved Laborers. The base is important for historical interpretation, however, especially in its depiction of a wilderness without people, a concept of "empty land" that furthered colonization and was outlined in Thomas Jefferson's letter to Congress asking for funds for an Expedition (prior to Lewis's and Clark's selection).

The size and style of the 1919 base also reflects a hero-worshipping stance that we do not ascribe to, and by displaying the base separate from the statue, we can examine the attitudes of that time period while also dismantling the aura of white supremacy.

In addition, without the elevation, the frieze at the bottom of the bronze becomes visible in detail for the first time. On this frieze are many portraits of the Agaidika (Lemhi) Shoshone, the Expedition, and Sacagawea, including scenes of dancing, buffalo hunting, and gatherings of adults and children. Though there are no extant notes by the sculptor that we are aware of, and we have been in contact with his grandchildren for oral history and collection purposes, searching for additional documents, the iconography of a young indigenous woman standing next to the two figures of Lewis and Clark in three

different relief scenes, is clear. Sacagawea is portrayed as standing within the Expedition group, not to the side. In another section, she is shown hugging and greeting a member of her lost family. Also on the frieze is the first depiction of York known in art, a depiction that is of particular interest to our Charlottesville partner, York Place. Chuck Lewis and now his son Charley Lewis have both preserved York's legacy and memory as the member of the Expedition who was enslaved by William Clark and who was given a promise of freedom on return that was not kept. Chuck Lewis was one of the Lewis & Clark Exploratory Center's founding donors.

Displaying the statue separate from the base will allow for greater and more accurate study of the statue. It becomes less of a monument and more of a work-of-art, and by being diminished actually increases in its educational value.

That said, if it would be City Council's wish for the statue to be on the base, or if that is required by law, then we would examine other options for display, including an inset into the ground or a separate viewing platform for the frieze. We could also petition for an exemption if there is a law prohibiting the separation of a monument from its base. The only other impediment to displaying them separately would be an unforeseen issue of safety, for viewers or for the statue.

We would install the statue and base on flat land where there is already a thin concrete slab that could be redone, concrete that was part of our original site plan. The statue would be positioned to face West, which was its original positioning. Our site is closed to any automobile traffic that is not part of our ticketed operations; interpretation and re-contextualization of the statue would be part of the ticketed experience, unlike the drive-by situation that existed on Main Street, with the interpretive Sacagawea plaque added by the City of Charlottesville unable to be read except by people willing to stand on the island surrounded by traffic.

If chosen, we would also like the Sacagawea plaque included as an important part of the statue's history, when Rozina George, Rose Ann Abrahamson, and their family first came to Charlottesville as representatives of Sacagawea's family and the Lemhi Shoshone (we use the City's spelling of her name here, while recognizing that the Abrahamson's use "Sacajawea"), and when the Monacan Nation danced as part of the installation of the plaque. We were present at this event and would like to include photographs, films, and the plaque as part of the interpretation of the statue, an interpretation that would exist in various locations on site. The history of the removal activism at that time, including that of Jennifer Hoyt Tidwell, Guy Lopez, and others, would be included. An acknowledgement of the Monacan Nation would be placed at the statue.

The Lewis & Clark Exploratory Center of Virginia, Inc. is an entity eligible to receive donations of property under the provisions of Virginia Code §15.2-953. We are a 501 (c) (3) non-profit organization.

Before offering our re-contextualization plan that relates directly to the statue, we will describe our current programs that are a tribute to Sacagawea. First, every group that comes to the Lewis & Clark Exploratory Center for a history tour participates in a group challenge called "Overboard," which teaches about how Sacagawea rescued important journals and scientific items when the White Pirogue capsized.

Though others were aboard the White Pirogue, she was the only person who took initiative. In our challenge, the group must decide what to save and what to keep out of 33 items; they must discard 11. In the same way that Sacagawea couldn't rescue everything, the group must decide their priorities. At the end, their decisions and their group decision-making process are discussed. They have the experience of coming to a consensus and working out conflicting opinions.

We are named the Lewis & Clark Exploratory Center because the Lewis and Clark families lived in Albemarle County and we were founded to examine their local legacy and the origin of the Expedition here as a concept. York or his father never lived here, nor did William Clark. Darden Towe Park was once owned by Jonathan Clark, William Clark's grandfather.

In addition to the local story, we tell the national one, especially how it relates to rivers, since we are located next to the Rivanna River. As a result, the accomplishments of Sacagawea and York, as well as Druillard, are highlighted. We have been visited by the descendants of Sacagawea's family, Druillard, Clark (William), Lewis, Sheheke (the Mandan chief), and Clark (Jonathan), among others.

We were founded in 2000 when City of Charlottesville and County of Albemarle officials and others decided that the local Lewis and Clark story was one left untold by the current historical sites. In advance of the National Lewis and Clark Bicentennial (2003-2006), which was to kick-off in Charlottesville, the Lewis & Clark Exploratory Center was planned and incorporated, with boat building programs for children and families already taking place.

At the time of the Bicentennial, the City of Charlottesville held a yearly Lewis & Clark Festival in its parks, and it sent members of its festival program to visit indigenous nations along the Lewis and Clark Trail to acquire replica artifacts of the highest quality, made by native artists. When the festival ended, those artifacts were given to the Lewis & Clark Exploratory Center, and they are proudly displayed today. We have added to that collection through purchase and donation, including purchasing contemporary native art. We have bronzes of Druillard, the Shawnee member of the Expedition, Sacagawea, Sacagawea's baby, Jean-Baptiste, and others, as well as representations of Sacagawea on coins and stamps, and photographs of statues of her found throughout the United States. We discuss representation with visitors and examine the varying ways she is depicted. Even the Sacagawea dollar, a recent tribute to her, is not without controversy; we discuss concerns related to the depictions. Because there were no depictions of York or Sacagawea made during their time, their portrayals are even more liable to reveal preconceptions.

Our tours at the Lewis & Clark Exploratory Center are all guided, and we tell the story of the Expedition using our artifacts, artwork, maps, boat replicas, and also commemoration memorabilia from the Centennial and Bicentennial. The contributions of Sacagawea are discussed at great length on our signature tour. We also have a library containing books about Sacagawea, for adults and for children. We have the support of renowned historical scholars who review our interpretations, including Gary Moulton, who has been working with us on how the Expedition was viewed within the early 1900's, and what books the sculptor would have had available for consultation.

In addition to "Overboard," we have an activity called "A Vote for Democracy," which is a participatory reading and decision-making activity for visitors that examines Sacajawea's and York's inclusion in

decision-making on the Expedition. We also have a language game, “Languages of the Expedition,” that asks visitors to sort words into the categories as a group, including words from the Sioux and Shoshone languages, French, Latin, Spanish, and English. Sign language is also discussed and taught in this component, both the sign language used on the Expedition and modern sign languages. Sacagawea, who is mentioned several times within the Lewis and Clark journals as being an “interpreters,” is honored in these activities. As we touched on before, her interpretation of the Shoshone language saved the Expedition from likely death in the Bitterroot Mountains; without her communication with her family, the Expedition would have been without horses to make the crossing.

Now that we have described some of our current programs relating to Sacagawea’s contributions as a partner, we will turn to our intended use of the statue, and to how the statue would be re-contextualized. The statue would be used to study the changing depictions involving race, gender, land, and history within American art through multiple generations. The statue would be part of some of our adult historical tours, and it would also be available for scholars. In particular, the frieze, with its depiction of York and of indigenous dance, hunting, ceremonies, and social interactions with the Expedition, would offer more insight into cultural ideas and biases in the year 1919. The ways that the women’s suffrage movement claimed Sacagawea as an emblem, and the various implications of that claim, both positive and negative, would also be discussed.

We would include this re-contextualization in our oral guided tours, and in interpretive signs at the statue and inside the building, and in on-line programs. One of our programs concerning the statue, “An Interactive Look,” was presented at a national conference in 2020; this year, we won a national award for our digital work at that conference, in part because of our Zoom program of the Lewis, Clark, and Sacagawea statue.

For the interpretive signs, we would seek scholarly support and editing from indigenous scholars and others, including our Board member, Elizabeth Chew, who is Chief Curator at Montpelier, and Jeffrey L. Hantman, author of *Monacan Millennium*, who has worked with us previously on lectures and programs.

The Lewis & Clark Exploratory Center studies the way that the Expedition has been remembered throughout the decades, with the reputation of Lewis and Clark themselves rising and falling, and with a variety of interpretations. Around 1900, the history books discuss Sacagawea in terms of slavery; as the century progressed, she was less and less described as enslaved. Currently, the Shoshone and the Hidatsa differ greatly on what her kidnapping and later marriage signified. All of these issues, and issues of her depictions, are complicated and worthy of more study as we seek to understand the pulls of racism and the pulls of multi-culturalism, diversity, and mutual respect. These conflicting forces are represented in the Keck statue, as they are also encapsulated by the Expedition itself. Sacagawea played a pivotal role in reconciling inter-tribal and racial hostilities, particularly with the Nez Perce. Sacagawea began a conversation with Watkuweis, a Nez Perce woman who, like Sacagawea, had once been kidnapped, but unlike Sacagawea she had been able to return home. Though the Nez Perce considered the Shoshone enemies, common ground was achieved in this conversation and the Nez Perce helped the Expedition survive.

In one film I will mention below, aired in 2003, indigenous leaders and other scholars speak on Sacagawea and offer valuable interpretation. It is worth noting, however, that though the film gives

deep insights, it is also dated in the way it discusses gender. Today the words might be accused of cis-gender bias and the film would receive criticism. If twenty years can bring about significant changes in these discussions and in depictions, how much more the almost hundred years since the Keck statue was erected. It is those changes that we seek to study through the physicality of the historical artifact, the statue, and the associated climate of that age, including other artwork and publications. We perhaps should also recognize that we don't know how much of the current language and ways of thinking will be considered antiquated and detrimental twenty years from now. In the same way that Keck wished to honor Sacagawea, and yet for many people failed to do so, we don't know how the legacies of the current generation will be assessed. The important factor in terms of how we re-contextualize the statue is that we remain open to new conversations and criticisms, and that the overall goal be to respect the memory of Sacajawea and to move forward from gender and racial biases by understanding the forms they have taken.

One of our priorities is to listen to native voices concerning Sacagawea, especially to the Lemhi Shoshone, who have guided this process here in Charlottesville. The Lemhi Shoshone, the Mandan/Hidatsa, the Nez Perce, and the Wind River Shoshone all have oral histories concerning Sacagawea, as well as different ways of saying her name. The Abrahamson's described these differences at their presentation at the University of Virginia when they were last here. The Lewis & Clark Exploratory Center would present these differences while making sure to follow Lemhi Shoshone guidance concerning their own knowledge and preferences.

Two sources we have studied include Rozina George's essay on Sacajawea, <https://trailtribes.org/lemhi/agaidika-perspective-on-sacajawea.htm> and the PBS film we mentioned earlier, "The Journey of Sacagawea," PBS 2003

<https://www.pbs.org/video/scout-people-culture-journey-of-sacagawea/>

Quotes from Rose Ann Abrahamson in the film offer new avenues for making educational connections. About Sacagawea, she says, "I think in a child's life when the sunshine and the waters flow, when you hear the sounds of the birds, and mom and dad is near, life couldn't be any better. And I believe that even through hard times, through good times, that she experienced the joys of childhood."

"I think, and I will assert at this time, that Sacajawea's culture carried her through, carried her through this expedition, carried her through all the challenges and obstacles that they had to face, the hardships that she had to face. In our culture we're taught about how to deal with fear, how to deal with situations or crises. We're taught that. And when the young girls would go up in the mountains to sleep they called it doyahovie. They'd go with either their mother or their grandmother or both their grandmother and mother and the mother and the grandmother would teach them this is what you do. This is what you do in a marriage. This is what you do when you are bearing a child. This is what you do when you're afraid. This is how you pray."

Rozina George writes, "Sacajawea is unique among Native American heroes. She is not only unique because she is a woman, but she acted as ambassador and diplomat, bridging the relation between the Indian and non-Indian worlds. As we enter into the millennium, the nation and world have accepted



Sacajawea as the symbol of unity and harmony because she was an individual who was willing to share her culture and knowledge to perpetuate peace.”

She also emphasizes Sacajawea’s knowledge of herbs, roots, and berries, knowledge that would keep the Expedition and her baby from starvation. Sacajawea’s knowledge of geography, of mountains and rivers, would allow her to find her people once again and also to guide the Expedition at crucial junctures.

In re-contextualizing the statue, we will link Sacagawea to our many programs that give children the joy of exploring nature, “when the sun shines and the waters flow,” to our teaching of geography that involves visitors naming areas, sometimes after animals that the rocks might resemble, in the same way that Beaverhead Rock was named by the Lemhi Shoshone and recognized by Sacagawea on the Expedition. We will talk about her curiosity and her insistence on seeing the whale and the ocean. We will talk about her strength, and how she took action she saw as needed.

If we receive the statue, we will also initiate art programs to make new sculptures and artworks related to Sacajawea and indigenous peoples, some figurative and some non-figurative. At the suggestion of Dustina Abrahamson, we will use the statue to bring attention to the missing and murdered indigenous women of today. Because from certain angles Sacagawea seems to be disappear within the statue, we can use her figure to discuss native visibility and disappearances. We will invite indigenous artists and students to be part of this recognition and creation of art. We have experience participating with film and sculptural projects with UVA and PVCC, including the Let There Be Light exhibitions, and we would use this experience in our future work. We have also cast small bronzes and done environmental sculpture, and we have installed a found object sculpture in honor of York that is a starting point for children to make their own tributes to York.

(2.4) We have mentioned our artifact and historic statue experience earlier (we have valuable bronzes within the building), and we also have training in cleaning and maintaining patina. We are consulting with Paul DiPasquale about installation and maintenance, should we be selected. Paul DiPasquale is the sculptor of the Arthur Ashe monument in Richmond and was a part of Team Henry, advising on statue removal in Richmond and Charlottesville.

We have the financial ability to carry out this re-contextualization and proposed use. The fundraising for the statue has gone extremely well in a short amount of time, and promises to bring more funding in the future, if we are chosen. In terms of our overall financial stability, we have low operating costs, and we are self-sufficient from local government in terms of operational funding, receiving no money from the City of Charlottesville’s annual budget or the County’s. While many other organizations have larger budgets, they are also receiving more governmental funds. We have a diversity of income sources, including renting the building to related non-profits, such as the Nature Conservancy, the AIA (who awarded our building Best New Building in Virginia), and others. There is also a consistent need within the schools to study the Lewis and Clark Expedition and Virginia history, which are both in the state SOLs. Our hands-on approach is popular with educators. We have served a diversity of audiences over the years, developing English as a Second Language programs, and helping to introduce refugee children to the history of their new county. We attend conference events hosted by native tribes. We have worked closely with City and County services and schools, offering free and reduced fee programs

supplemented by grants and donations. Our Art and History workshops have been taught in afterschool programs.

We have an advantage in interpreting the statue in that we are small, approximately the same size as the Kluge-Ruhe Museum, and we have direct conversations with each visitor. We answer questions personally, and we stress oral communication, in part as a tribute to native cultures, preferring to conduct a tour as a give and take of questions and responses, rather than relying too much on printed words.

We have covered much of the historical narrative of the positive role Sacagawea provided, but we'd like to add that the statue, at the level of the frieze, has "the guide—Sacagawea" written on it by the sculptor's hand, not incised, and that there are many instances of her being a guide, including at the Three Forks of the Missouri. We would highlight her knowledge of geography, which is an important part of what we teach at the Lewis & Clark Exploratory Center, particularly to children, who might not know how to spell where they live, or understand where they are in relationship to other cities. Sacagawea was a child under the age of twelve when she learned the topography of where her tribe lived.

We understand the concerns that the statue may be interpreted to depict a lesser, more subservient role provided by Sacagawea, and we will emphasize her significant contributions in text and oral recounting, and make clear the limitations of the statue. We will also point out the other depictions of her within the frieze.

Our Re-contextualization Plan will be made binding into the future, and to our heirs, successors and assigns, through the means that the City of Charlottesville City Council prefers. We can sign an agreement, such as a Resolution, accompanying the transfer of property that outlines the priorities and vision statement of the re-contextualization plan: that Sacagawea be respected as a full partner in the Expedition, that her contributions be celebrated, and that the statue be depicted within its historical context. We could make those same provisos mandatory for any future property sale. As with any nonprofit, in the case of dissolution, the Internal Revenue Service asks that property be dispersed to similar nonprofits. We could require that the sale or transfer be to a non-profit of similar mission who will agree to the provisos.

We confirm that we will be solely responsible for all costs, and that the City will not be liable for any costs associated with removal, relocation or re-erection of the Statue. We will be solely responsible for all such costs, including transportation. Once the Statue is conveyed, we will be solely responsible as to the means and methods, and any contractual services required, for moving, transporting and re-erecting the Statue.

2.7 Alexandria Searls, the Executive Director of the Lewis & Clark Exploratory Center, is authorized to negotiate with the Offeror and bind the Offeror to the terms of the Offer. Her phone number is 434-996-7282, and her email is [alexandriasearls@gmail.com](mailto:alexandriasearls@gmail.com) or [lcecvirginia@gmail.com](mailto:lcecvirginia@gmail.com)

We feel that we can live up to the Vision Statement of the City of Charlottesville, by examining issues of social and economic justice, and healthy race relations, to quote the vision statement, and by being a place of cultural and creative capital in Central Virginia, one that contributes to a united community that

treasures diversity. One way we can contribute to a united community is to be a place where people can explore and discuss ideas—ideas of the past, and current ideas and ideals. If selected, we can be accountable after the agreement by virtue of being in the same community and working with the public schools here. We would welcome input from the Historic Resources Committee and others, while recognizing that within the demands of the pandemic, a housing crisis, and other priorities you may wish to move on from this issue after your decision. This is to say that we are open to your vision and to your guidance, in whatever form you might want that to take.

Thank you very much for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Alexandria Searls".

Alexandria Searls  
Executive Director  
Lewis & Clark Exploratory Center

## Sacajawea's Descendants Input - Legal Documentation in Storage of Statue

Roseann Abrahamson <roseabrahamson@yahoo.com>

Mon 12/13/2021 4:50 PM

To: Walker, Nikuyah <nwalker@charlottesville.gov>; Council <Council@charlottesville.gov>

**\*\* WARNING:** This email has originated from **outside of the organization**. Do not click links or open attachments unless you recognize the sender and know the content is safe.\*\*

Bu'nah City Council:

We are pleased with the decision made on the statue with our ancestor's image to be stored at the Lewis & Clark Exploratory Center, as an agreed upon site after the removal per resolution in November 2019, and finally resolved and finalized on November 6, 2021. I have been in contact with Alexandria Searls, the Center's director, and Grace Softdeer, Indigenous advocate/spokesperson, and informed them of my intent to communicate at this time.

We, the descendants, would like to read the proposed legal plan as drafted by your legal counsel, before it is signed. And here are some aspects we would like see incorporated to ensure that statue which shows a cowering, cringing, misleading and distorted image of America's heroine, Sacajawea.

- The terminology that can be used to suffice the City Council and our concerns in regards to the statue, the Lewis & Clark Exploratory Center could be identified as a shared stewardship. This is translated as sharing authority, expertise, and responsibility for the "respectful" attribution, documentation, interpretation, display, care, storage, public access of and to the statue. The stewardship would function in advice with the familial descendants, and the Charlottesville City Council. It must be emphasized that shared stewardship must be one of collaboration and consultation. This will also bind a commitment from us to assist and share authority in the future.

In addition, in recognizing these aspects:

- The city must recognize the significance, relevance and value of integrating both the familial and the Center's knowledge in providing solutions to store, present, and contextualize the statue. In addition, we need to address the contemporary issues surrounding the statue, and encourages its use in project planning and implementation.
- It should state that we must protect the familial knowledge and tribal traditional knowledge for the benefit of all indigenous peoples and your citizens and communities, and visitors from throughout the world. The statue is vulnerable both because it is exploitable and has been exploited. As years pass, we also need to recognize the significant change or decline in leadership of those persons, who addressed its issues, fought for the statue's removal, for its storage, and the transmission of this knowledge in years to come.
- Finally, we must state that the familial descendants should have the right to maintain, control, and protect their cultural heritage,

traditional knowledge, and traditional cultural expressions about their ancestor's image. It must never be sold to anyone. The city must take measures to protect this now and in the future.

Thank you, and again if you have any further questions, my cell phone number is 208-339-1026 and my email is roseabrahamson@yahoo.com.

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



<b>Agenda Date:</b>	<b>December 20, 2021</b>
<b>Action Required:</b>	Award of Contract by Adoption of Resolution, (1 Reading)
<b>Presenter:</b>	Lisa Robertson, City Attorney
<b>Staff Contacts:</b>	Ashley Marshall, Deputy City Manager; Sam Sanders, Deputy City Manager; Lisa Robertson, City Attorney
<b>Title:</b>	<b>Consideration of the Award of a Contract for City Manager Services</b>

**Background:**

With City Council’s permission, staff recently issued a procurement solicitation, seeking proposals from firms interested in contracting with the City to perform the functions of a City Manager. Proposals received in response to the RFP will be reviewed by City Council and staff within a closed meeting of City Council on December 20, 2021.

Although the more common method of engaging a City Manager is to hire an individual as an employee, with a payroll-processed salary and benefits, on occasion local governing bodies in Virginia have elected to engage a chief executive/ administrative officer (aka “city manager” or “county administrator”) by hiring a firm/ business entity to provide those services as an independent contractor. The City of Petersburg used that method some years ago, and in the Summer of 2021 Matthews County, Virginia engaged a firm to provide interim county administrator services. In Virginia, municipalities are prima facie regarded as being the sole judges of the necessity and reasonableness of the method by which a particular governmental function will be carried out.

In October, City Council’s plan was to engage an Interim City Manager for a period of five to six months, and to begin an executive search process for a permanent City Manager in the second quarter of 2022. It is staff’s understanding and experience that a search process that would include robust community engagement would take from two to six months from start to finish (i.e., a start-work date for a permanent city manager). Any contract with a firm can be structured in a manner that accommodates that same time table.

**Discussion:**

In February 2021 City Council appointed a City Manager as a City employee, with the intention that, once the City government could be stabilized, a competitive selection would be undertaken with a process that would include public engagement. That individual was the fifth individual employed as City Manager, or “Interim” City Manager, since 2017. That individual resigned in October 2021, and City Council then appointed an Interim City Manager and arranged for the individual to commence employment on December 1, 2021. Shortly prior to December 1, 2021 that individual withdrew, and the City currently remains without a City Manager. The functions of a City Manager include the activities listed in Virginia Code §15.2-1451. All of these activities can be undertaken by personnel of an independent contractor, pursuant to provisions set forth within a contract for services authorized by City Council. So long as the functions set forth in Virginia Code §15.2-1451 are carried out, the services for performing those functions may be provided

either by an employee or by personnel of an independent contractor firm.

A contract with a firm will allow City Council to continue the process of stabilizing the City government in the short term, with the assistance of experienced professionals who might not otherwise be interested in becoming a City employee, and with the continued work and support of the Deputy City Managers who are currently covering activities listed in Virginia Code §15.2-1541. A contract will also allow City Council to attract experienced professionals on a short-term basis, without the financial commitments associated with establishing an employment relationship with an individual, and an opportunity to demonstrate a stabilized organization prior to commencing an executive recruitment for a permanent city manager with all of the education, skills and experience necessary to lead the City organization.

**Budgetary Impact:** the RFP instructs offerors to include information about the price at which their services would be offered, as part of their proposals. In advance of the City's execution of any contract, the City's Finance Director would be required to verify that funding is available within the amounts appropriated for spending with the FY 22 budget.

**Alternatives:** (1) City Council may award a contract, by adopting the attached Resolution, or (2) City Council may cancel the RFP, or reject any or all proposals received in response to the RFP.

**Recommendation:** Staff recommends that City Council should select the offeror which, in its opinion, has made the best proposal and provides the best overall combination of quality, price, and various elements of city manager services that in total are optimal relative to the City's needs for an Interim City Manager. Alternatively, City Council could cancel the RFP and/or reject any or all proposals received, and hire an individual recruited directly by councilors as a temporary, short-term employee.

**Attachment(1):**

- Form Resolution

**RESOLUTION  
TO AWARD A CONTRACT  
FOR CITY MANAGER SERVICES**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE, VIRGINIA that a contract is hereby awarded to the firm of \_\_\_\_\_ (“Successful Offeror”) to provide City Manager services, this City Council having determined that the firm made the best proposal and offers the best overall combination of quality, price, and various elements of the required services that, in total, are optimal to the City’s needs for an interim city manager. Notice of award shall be posted in accordance with procurement requirements.

The City Attorney shall prepare a contract for execution by the Mayor and the Successful Offeror.



CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	December 20, 2021
Action Required:	Update
Presenter:	Alex Ikefuna, Interim Director, Office of Community Solutions
Staff Contacts:	Sam Sanders, Deputy City Manager, Operations, Alex Ikefuna, Interim Director Brenda Kelley, Redevelopment Manager
Title:	<b>Charlottesville Affordable Housing Fund (CAHF) Program Review/Redesign Update</b>

**Background:**

On July 19, 2021, the City Council approved funding to Charlottesville Affordable Housing FUND (CAHF) Program Performance Review and Redesign, and Inclusionary Zoning Design. The CAHF program review would include evaluation of the past performance of the housing programs, past program agreements, selection and contracting processes, development of new approaches as needed, grant terms, program criteria, and evaluation metrics the City can use in the future.

**Discussion:**

The Scope of Work includes two tasks. Task 1: Program review; and Task 2) Program Redesign – Equitable and Affordable Development Standards.

**Methodology and Interview Process**

HR&A has completed substantial review of task 1 and the discussion today is to provide the City Council interim updates, and next steps. During Task 1, HR&A examined past performance of the City's affordable housing programs. This work included collecting and reviewing available records from the City and funding recipients which focused on affordable housing units created and households served. HR&A is in the process of creating an up-to-date inventory of City-funding awards since 2010, drafting findings and preparing recommendations. To accomplish this, HR & A has reviewed past funding agreements and performance for City-funded projects and programs over a 10-year period (2010-2021) and interviewed agencies that received City funds for operations, programming, and development of affordable housing units. The primary purpose is to compare the level of impact projected during the application period with the impact achieved by the program or project.

Following the initial data review, HR&A contacted project sponsors, proposers, and recipients of CAHF funding to schedule interviews to discuss individual records of CAHF funding allocations from the City since 2010 and to solicit additional information for each CAHF funding allocation.

The following agencies were interviewed:

- Albemarle Housing Improvement Program, Inc. (AHIP)
- Charlottesville Abundant Life Ministries (CALM)
- Charlottesville Redevelopment and Housing Authority (CRHA)
- Habitat for Humanity of Greater Charlottesville
- Jefferson Area Board for Aging (JABA)
- Local Energy Alliance Program (LEAP)
- Piedmont Community Land Trust (PCLT), formerly Thomas Jefferson Community Land Trust (TJCLT)
- Piedmont Housing Association (PHA)
- Thomas Jefferson Area Coalition for the Homeless (TJACH)

### Highlights of the Review

1. Since 2010, the City of Charlottesville has administered a total of **\$46.7 million** in funding to support a variety of affordable housing initiatives across the City, drawing from the City's General Fund, Capital Budget (CIP) and Housing Trust Fund (CAHF), and federal HOME and CDBG funds. This breaks down as follows: Housing Trust Fund and Capital Budget (\$38,623,967), General fund (\$5,185,260, and CDBG/HOME (\$2,920,628).
2. Funding levels have averaged \$3.6 million per year, with a large outlier in 2021 which totaled \$10.4 million.
3. The funding is spread across a variety of uses. The largest share of funding (47%) went towards **development** (new construction of multifamily and single-family homes, and significant rehabilitation of multifamily buildings). **Program** (owner-occupied single-family rehabilitation and energy retrofits, homelessness services, rental subsidy, and homeownership subsidies) grants made up the next highest share, 4(0 %) of funding. **Operating** subsidies for nonprofits made up (11%) of expenditures. The remaining 2% were used for internal City administration, such as housing-related staff and consulting fees.
4. The spending yielded a total of about 2,300 households served, and 1,600 units created or preserved.

### Alignment with City Council's Vision and Strategic Plan:

Since this request is associated with the implementation of the Comprehensive Plan and Affordable Housing Plan, it supports all aspects of City Council Vision in one way or another. It contributes to the following 2018-2020 Strategic Plan Goals: Goal 1.3 to increase affordable housing options, 1.5 to intentionally address issues of race and equity, Goal 2: a healthy and safe city, Goal 3: a beautiful and sustainable natural and build environment, Goal 5: a strong, creative and diversify economy, and Goal 5.4 to foster effective community engagement.

### Community Engagement:

There have been several community engagement meetings and activities conducted as part of the comprehensive plan update and affordable housing planning process.

## **Budgetary Impact:**

This is an update of already funded project.

## **Recommendation:**

### Next Steps

- Summarize the Task 1 findings and host a discussion with the project team to discuss the findings and potential implications for the redesign of City processes.
- Produce a final memorandum summarizing the past performance of the City's affordable housing procurement, selection, and contracting processes, and making preliminary recommendations for ways to improve these processes.
- Clearly define City's affordable housing policy goals at each step of the solicitation and procurement process.
- Initiate and complete Task 2. The following represents components of Task 2:

#### **Task 2. Program Redesign: Equitable and Affordable Development Standards (6-8 weeks)**

*Task 2.1* Throughout Task 2, HR&A will hold weekly meetings with program staff to coordinate our work and discuss any questions that may arise.

*Task 2.2* Based on the findings of Task 1, and the guiding principles and recommendations in the Charlottesville Affordable Housing Plan, HR&A will work with City staff to develop detailed recommendations for the redesign of the City's RFP and NOFA processes, with a focus on aligning the City's funding with the priorities established in the housing plan.

*Task 2.3* HR&A will work closely with City staff to develop a set of recommended changes to the City's selection and contracting processes that align with revised RFP and NOFA processes and the goals of the Charlottesville Affordable Housing Plan, with a focus on structuring grant and loan agreements to ensure that City funding has the intended impacts.

*Task 2.4* HR&A will develop a set of recommendations for the ongoing monitoring and reporting of city-funded affordable housing programs, including criteria and benchmarks for program evaluation and provider selection to guide future policy and decision-making. These criteria will likely quantify performance measures such as:

- Program impact and cost, to track the efficient use of City funds toward providing affordable housing, supporting homeownership, and serving the income levels most in need of assistance. (*e.g. number of homes, cost per unit, local subsidy per unit, total subsidy per unit, tenure type, length of affordability, affordability level*)
- Beneficiary data, to understand the populations served by the City's affordable housing programs and to ensure racially equitable access to and distribution of affordable housing. (*e.g. race, location, income, household size*)
- Alignment with the guiding principles and recommendations of the affordable housing plan, such as inclusive governance and regional collaboration. (*e.g.*

*involvement of regional partners, inclusion of diverse community representation in decision-making by funding recipient)*

Task 2.5 HR&A will hold a meeting with City staff to review the recommendations of Tasks 2.2 through 2.4 and discuss any revisions or changes needed. Following this meeting, we will develop a final set of recommended changes to the City's NOFA, RFP, contracting, and monitoring processes. We will hold one meeting to present the findings of Tasks 1 and 2.

**Alternatives:**

Not applicable!

**Attachments:**

None

ARTICLE XIII. - COMMUNITY DEVELOPMENT BLOCK GRANT PLANNING

*Footnotes:*

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**Editor's note**— *Ord. of August 15, 2016(2), amended Art. XIII in its entirety to read as herein set out. Former Art. XIII, §§ 2-416—2-420, pertained to similar material. See also the Code Comparative Table.*

Sec. 2-416. - Purpose and applicability of article.

- (a) This article sets forth planning and decision making procedures for the community development block grant (CDBG) and HOME Investment Partnerships (HOME) programs, funded under the federal Housing and Community Development Act of 1974, and the federal HOME Investment Partnerships Act of 1991, as amended.
- (b) CDBG funds should be used primarily to benefit low and moderate income persons and to meet the national objectives, as defined by the United States Department of Housing and Urban Development (HUD). The funds may be spent for any activities permitted by the Housing and Community Development Act of 1974, as amended, and applicable federal regulations. HOME funds should be used to strengthen public-private partnerships to provide more affordable housing, as defined by HUD. The funds may be spent for any activities permitted by the HOME Investment Partnerships Act of 1991, as amended, and applicable federal regulations.
- (c) The process established by this article shall apply only to funds specifically allocated for CDBG programs under the Housing and Community Development Act of 1974, as amended, and the HOME Investment Partnerships Act of 1991, as amended, or other funds specifically allocated for such purposes by city council.
- (d) This process shall not apply to the allocation of any funds remaining from urban renewal activities in the Garrett Street or Vinegar Hill urban renewal projects.

(Ord. of 8-15-16(2))

Sec. 2-417. - Community development block grant and HOME task force.

- (a) The community development block grant/HOME task force is hereby established to make recommendations to the planning commission and city council for funding housing, community development, economic development, and public service needs based on the consolidated plan and the CDBG priorities as established by city council annually. The CDBG/HOME task force will work with city administration to evaluate CDBG and HOME programs to ensure consistency with the consolidated plan goals. Such recommendations and evaluations shall be forwarded in accordance with the procedures set forth in this article.
- (b) The CDBG/HOME task force shall be composed of nine (9) members appointed by the city council. The members shall include:
  - (1) Five (5) members from HUD's identified income eligible areas of the city who are residents of city

- council designated priority neighborhoods;
- (2) One (1) member of the planning commission;
- (3) One (1) member representing public service programs as defined at 24 CFR 570.201;
- (4) One (1) member of the city school board;
- (5) One (1) additional citizen.

The term for the one (1) member of the CDBG task force from the planning commission and the one (1) member of the school board shall be coextensive with the term of office to which such member has been elected or appointed, unless the city council, at the first regular meeting each year, appoints others to serve as their representatives. The remaining members of the task force first appointed shall serve respectively for terms of one (1) year, two (2) years, and three (3) years, divided equally or as nearly equal as possible between the membership. Subsequent appointments shall be for terms of three (3) years each. Vacancies shall be filled by appointment for the unexpired term only. Members may serve up to two (2) consecutive full terms.

(Ord. of 8-15-16(2))

Sec. 2-418. - Community development block grant (CDBG)/HOME task force subcommittees.

- (a) *Priority neighborhood subcommittee.* When the city council determines that a portion of available CDBG funds will be used to assist an income eligible area, the council may appoint a priority neighborhood subcommittee, including but not limited to representatives of the CDBG task force, the planning commission and residents, business people and property owners from the priority neighborhood. The term of each priority neighborhood subcommittee shall be three (3) years, unless otherwise specified by the council, and each priority neighborhood subcommittee shall operate under such guidelines and perform such advisory functions as the council may direct at the time of appointment. Priority neighborhood subcommittee shall make recommendations to the CDBG/HOME task force for funding housing and community development needs based on the consolidated plan and work with the city to evaluate feasibility and to ensure consistency with programmatic regulations. The city council will designate an income eligible area for three (3) years with the authority to postpone or extend funding in the event of a compelling project or need.
- (b) *Economic development subcommittee.* When the city council provides for a CDBG economic development set aside, the city staff who participate on the strategic action team (SAT) will serve as the economic development subcommittee. The SAT is an interdisciplinary team of city staff who examine the city's workforce development efforts and assist with policy development focused on self-sufficiency for city residents. When the city council determines that a separate economic development subcommittee is needed, the city council shall appoint members with economic development expertise, including but not limited to local business owners, chamber of commerce, office of economic development and other major stakeholders. The subcommittee shall make recommendations to the CDBG/HOME task force for funding economic development projects based on the consolidated plan and work with city staff to evaluate feasibility and ensure consistency with programmatic regulations.

(Ord. of 8-15-16(2))

Sec. 2-419. - Annual process.

The following steps shall comprise the annual process for planning and programming the expenditure of CDBG and HOME funds.

- (1) City staff assigned to CDBG task force will review CDBG/HOME consolidated plan goals and applicable regulations to formulate recommendations for annual funding priorities.
- (2) The city council shall conduct a public hearing to solicit the views of citizens on city wide community development and housing needs. The purpose of this public hearing shall be for council to receive citizens' comments on recommended priorities and program performance. The notice of the public hearing shall include an estimate of the amount of funds available for CDBG and HOME activities and the range of activities that may be undertaken, as well as how the public can access a copy of the most recent consolidated annual performance evaluation report (CAPER). Public comments may be presented in writing or in person.
- (3) After receiving all comments, council shall establish priorities for the grant year, including such percentage allocations of funds to categories and to particular income eligible areas as it deems appropriate.
- (4) After council establishes priorities for the grant year, city staff with the CDBG/HOME task force will develop a request for proposals, within the funding priorities established by council, to be advertised and distributed to interested parties and prior recipients of funds.
- (5) Responses to the city's request for proposals will be evaluated by the CDBG/HOME task force.
- (6) The CDBG/HOME task force shall provide funding recommendations to the planning commission and city council to ensure that proposed projects are consistent with the CDBG program requirements and national objectives and/or HOME program requirements, as applicable. Review will also include a determination of consistency with the city's comprehensive plan and affordable housing goal(s).
- (7) The city council and planning commission shall conduct a joint public hearing to receive public comments on the proposed annual action plan of the consolidated plan and CDBG/HOME performance, as appropriate. Notwithstanding the foregoing, the CDBG/Home performance plan may be presented at a separate public hearing as required by the Code of Federal Regulations.
- (8) Following the public hearing and any additional meetings or hearings deemed by the city council to be necessary, the council shall make a final decision on the programs, projects and expenditures to be funded from the year's CDBG/HOME programs.
- (9) The city shall provide the task force and planning commission with the Consolidated Annual Performance Evaluation Report (CAPER) in conjunction with the city's submission to HUD. The CAPER and evaluation of program specific successes and challenges will be used in future CDBG/HOME recommendations to city council for projects and programs.
- (10) Once council has approved and funded a program, any reprogramming and budgetary changes will be done consistent with the citizen participation plan adopted by council.

(Ord. of 8-15-16(2))

Sec. 2-420. - Procedures for public hearings, meetings and records.

- (a) Plans or amendments, as required under this article shall be advertised in the manner provided by Code of Virginia, § 15.2-2204, and in accordance with the adopted citizen participation plan.
- (b) All meetings conducted pursuant to this article and all records of the CDBG and HOME programs shall be subject to the provisions of the Virginia Freedom of Information Act.

(Ord. of 8-15-16(2))

Sec. 2-421. - Reserved.

**Editor's note**— Ord. of Dec. 15, 2003, repealed § 2-421, which pertained to expiration of article. See also the Code Comparative Table.