



## CITY COUNCIL AGENDA

April 1, 2024

### CERTIFICATIONS

Juandiego R. Wade, Mayor  
Brian R. Pinkston, Vice Mayor  
Natalie Oschrin  
Michael K. Payne  
J. Lloyd Snook, III  
Kyna Thomas, Clerk

#### 4:00 PM OPENING SESSION

Call to Order/Roll Call

Agenda Approval **APPROVED 5-0 (PINKSTON/PAYNE)**

#### Reports

1. Report: Affordable Housing Report FY2024
2. Report: Public Safety Outcome Area: FLOCK

#### 5:30 PM CLOSED SESSION

#### 6:30 PM BUSINESS SESSION

Moment of Silence

Announcements

Recognitions/Proclamations

- Proclamation: **Charlottesville Dark Sky Week**

#### Community Matters

Consent Agenda\* **APPROVED 5-0 (PINKSTON/OSCHRIN)**

3. Minutes: January 22 regular meeting, January 26 Council retreat, February 1 special meeting and budget work session, February 7 joint Council-School Board budget work session, March 14 budget work session, March 21 budget forum and public hearing, March 26 decarbonization work session
4. **Resolution:** Resolution to appropriate USDA Forest Service Urban and Community Forestry Inflation Reduction Grant for Charlottesville Urban Forest Management Planning - \$150,000 (2nd reading)  
**#R-24-035**
5. **Resolution:** Resolution appropriating funding in the amount of \$21,458 to be received from Library of Virginia Circuit Court Records Preservation Grants Review Board (2nd reading)  
**#R-24-036**
6. **Ordinance:** Ordinance amending the Charlottesville Code of Ordinances, Section 2-98(b) to increase the appropriation amount requiring two readings from \$1001.00 to \$5000.00. (2nd reading)  
**#O-24-037**
7. Resolution: Award of FY24 Charlottesville Affordable Housing Fund (CAHF) and FY25 Housing Operations and Program Support (HOPS)
  - a. **Resolution:** Resolution to award FY24 Charlottesville Affordable Housing Funds (CAHF) Grants (2nd reading)  
**#R-24-038**
  - b. **Resolution:** Resolution to award FY25 Housing Operations and Program Support (HOPS) Grants (2nd reading)  
**#R-24-039**
8. **Ordinance:** Ordinance Amending City Code Article II. Section 2-38. Organizational Meeting and Section 2-39. Elections, Terms and General Powers and Duties of Mayor, Vice-mayor and Mayor Pro Tempore; Mayor's Veto (2nd reading)  
**#O-24-040**

reading)

- 9. Resolution: Appropriating Funding for the Rugby Avenue Bicycle & Pedestrian Trail Project - \$130,059.50 (1 of 2 readings)
- 10. Resolution: Appropriating Funding from the BAMA Works Grant to Community Attention Foster Families - \$5,000 (1 of 2 Readings)
- 11. Resolution: Appropriating funds from the Batten Foundation to the Department of Human Services - \$40,000 (1 of 2 readings)

12. Resolution: #R-24-041 Resolution for Approval of Memorandum of Understanding between Bennett's Village and the City of Charlottesville

13. Resolution: #R-24-042 Resolution for Approval of Lease Agreement between Bennett's Village and the City of Charlottesville

### City Manager Report

- Report: City Manager Report

### Action Items

14. Resolution: #R-24-043 Resolution calling for an immediate ceasefire and end to violence in Israel and Palestine

APPROVED 3-1-1 (PINKSTON/PAYNE); Wade opposed and Snook abstained.

15. Public Hearing/Ord: FY2025 Budget Ordinance and Annual Appropriation, and Tax Rate/Tax Levy Ordinance (1 of 2 readings)

a. Ordinance: Establishing the Annual Tax Levy for Tax Year 2024 (1 of 2 readings)

b. Ordinance: Approving a budget and annual appropriation of funding for the City of Charlottesville for the Fiscal Year ending June 30, 2025 (1 of 2 readings)

16. Ordinance: Ordinance Amending Sec. 30-53 of the Charlottesville City Code to increase the assessed value threshold at and below which qualifying vehicles will receive 100% Personal Property Tax Relief from \$1,000 to \$1,500 (1 of 2 readings)

17. Ordinance: #O-24-044 Ordinance to amend and reenact City Code Chapter 19 to allow participants of any City-sponsored retirement plan to serve on Retirement Plan Commission (1 of 2 readings)

APPROVED 5-0 (PINKSTON/OSCHRIN), waiving second reading by supermajority

### General Business

- 18. Report: Tree Commission "State of the Forest"

### Community Matters (2)

### Adjournment

**RESOLUTION**  
**Appropriating Funding in the Amount of \$150,000 To Be Received from Urban Sustainability Directors Network (USDN)**

**WHEREAS**, The City of Charlottesville, through the Office of Community Solutions, has been notified that it will be awarded a grant from Urban Sustainability Directors Network (USDN) for the United States Forest Service (USFS) Investment Recovery Act (IRA) Federal Award, in the amount of \$150,000.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that, upon receipt of the USFS IRA funding from the Urban Sustainability Directors Network, said funding, anticipated in the sum of \$150,000, is hereby appropriated in the following manner:

Revenues			
\$150,000	Fund 210	Order 1900548	GL 432190 (Federal pass-thru)

Expenditures			
\$150,000	Fund 210	Order 1900548	GL 599999 Contractual Services

**BE IT FURTHER RESOLVED** that this appropriation is conditioned upon receipt of \$150,000 in funds from the Urban Sustainability Directors Network.

**RESOLUTION**

**Appropriating Funding in the Amount of \$21,458 to be received from Library of Virginia  
Circuit Court Records Preservation Grants Review Board**

**WHEREAS**, The City of Charlottesville, through the Clerk of Circuit Court Office, has been notified that it will be awarded a grant from the Library of Virginia Circuit Court Records Preservation Grants Review Board (CCRP), in the amount of \$21,458;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that, upon receipt of the CCRP funding from the Commonwealth, said funding, anticipated in the sum of \$21,458, is hereby appropriated in the following manner:

Revenues

\$21,458	Fund 209	Order 1900546	GL 430110 State Grants
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Expenditures

\$21,458	Fund 209	Order 1900546	GL 530010 Professional Services
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**BE IT FURTHER RESOLVED** that this appropriation is conditioned upon receipt of \$21,458 from the Library of Virginia Circuit Court Records Preservation Grants Review Board.

**AN ORDINANCE AMENDING CITY CODE SECTION 2-98  
INCREASING THE AMOUNT THRESHOLD FOR  
APPROPRIATIONS REQUIRING A SECOND READING**

**WHEREAS**, City Code Section 2-98 (b) currently contains a limit of \$1,000.00 whereby no ordinance or resolution appropriating money exceeding that amount shall be passed by the City Council on the same day of its introduction nor shall an ordinance or resolution be valid unless at least three (3) days intervene between introduction and passage; and

**WHEREAS**, increasing this appropriation limit from \$1,001.00 to \$5,000.00 will eliminate the need for a second reading for appropriations of \$5,000.00 or less; and

**WHEREAS**, City Council finds that increasing the proposed limit is reasonable and will help facilitate efficiency for smaller appropriations; therefore,

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia that City Code, Section 2-98 (b), of the City of Charlottesville, 1990, as amended, be and hereby is amended as follows:

**Sec. 2-98. - Procedure for appropriating money, imposing taxes, etc.**

- (a) For every ordinance or resolution appropriating money exceeding one hundred dollars (\$100.00), imposing or releasing taxes, authorizing the borrowing of money, creating a debt or donating any property of the city, where the value of such property is one hundred dollars (\$100.00) or more, a vote of a majority of all members elected to the council shall be necessary and the "ayes" and "noes" shall be entered on the minutes of the council.
  
- (b) No ordinance or resolution appropriating money exceeding the sum of five thousand dollars \$5,000.00 imposing taxes or authorizing the borrowing of money shall be passed by the city council on the same day of its introduction, nor shall any such ordinance or resolution be valid unless at least three (3) days intervene between its introduction and passage. This subsection shall not apply to the annual appropriations provided for in section 11-4 of this Code.

(Code 1976, § 2-37)

**Cross reference**— Finance, Ch. 11; taxation, Ch. 30.

**BE IT FURTHER ORDAINED THAT** the City's Clerk of Council shall provide the approved amendment to CivicPlus (Municode) for updating to the City Code.

**RESOLUTION APPROVING ALLOCATION OF FY24 CHARLOTTESVILLE AFFORDABLE HOUSING FUND (CAHF) FOR AFFORDABLE HOUSING PROJECTS AND INITIATIVES IN THE AMOUNT OF \$835,000**

**WHEREAS**, the City of Charlottesville, Virginia, having established the Charlottesville Affordable Housing Fund (CAHF) Grant Program to provide financial support for community agency programs aiding in affordable housing and homelessness relief, hereby allocates \$835,000 from the Charlottesville Affordable Housing Fund (CAHF) Grant Program under Fund 426 Project: CP-084, as per the Capital Improvement Program budget for FY2024,

**NOW THEREFORE, BE IT RESOLVED** that the City Council, having received and reviewed recommendations from the CAHF Committee on the expenditure of CAHF funds for the CAHF Grant Program, resolves to allocate the amount to the following CAHF applicants:

Fund	Project	GL Account	Applicant	Funded Project/Initiative	CAHF Award
426	CP-084	530670	Albemarle Housing Improvement Program	Charlottesville Critical Rehabilitation Program	\$117,196
426	CP-084	530670	Community Services Housing, Inc. (CSH)	Rehabilitation Repairs to Preserve CSH Properties	\$74,054
426	CP-084	530670	Habitat for Humanity of Greater Charlottesville	Habitat Core 2024	\$393,750
426	CP-084	530670	Piedmont Housing Alliance	501 Cherry Avenue	\$250,000

**BE IT FURTHER RESOLVED** that all funding awards within this resolution shall be provided as grants to the entities listed under the “Applicant” column above to be used solely for the purposes outlined in their respective grant applications and any subsequent grant agreement. The City Manager is authorized to negotiate and execute funding grant agreements with each recipient to ensure proper utilization of funds.

**RESOLUTION APPROVING ALLOCATION OF FY25 HOUSING OPERATIONS AND SUPPORT (HOPS) PROGRAM FUNDING FOR AFFORDABLE HOUSING AND HOMELESSNESS SUPPORT PROGRAMS IN THE AMOUNT OF \$585,000**

**WHEREAS**, the City of Charlottesville, Virginia, having established the Housing Operations & Program Support (HOPS) program to provide financial support for community agency programs aiding in affordable housing and homelessness relief, hereby allocates \$585,000 from the Charlottesville Affordable Housing Fund (CAHF) under Fund 426 Project: CP-084, as per the Capital Improvement Program budget for FY2024.

**NOW THEREFORE, BE IT RESOLVED** that the City Council, having received and reviewed recommendations from the CAHF Committee on the expenditure of CAHF funds for the HOPS program, resolves to allocate the amount to the following HOPS applicants:

Fund	Project	GL Account	Applicant	Program /Initiative	Award
426	CP-084	530670	Blue Ridge Area Coalition for the Homeless	Homeless System of Care Coordination Program	\$35,000
426	CP-084	530670	Blue Ridge Area Coalition for the Homeless	Homeless Information Line Program	\$28,000
426	CP-084	530670	Community Services Housing, Inc. (CSH)	CSH Program	\$55,034
426	CP-084	530670	Habitat for Humanity of Greater Charlottesville	Homeownership Program	\$65,250
426	CP-084	530670	People and Congregations Engaged in Ministry	Case Management Program	\$70,000
426	CP-084	530670	Piedmont Housing Alliance	Charlottesville Affordable Housing Program	\$148,000
426	CP-084	530670	The Haven at First & Market Inc	Vital Housing Services Program	\$95,716
426	CP-084	530670	The Haven at First & Market Inc	Day Shelter Program	\$88,000

**BE IT FURTHER RESOLVED** that all funding awards within this resolution shall be provided as grants to the entities listed under the “Applicant” column above to be used solely for the purposes outlined in their respective grant applications and any subsequent grant agreement. The City Manager is authorized to negotiate and execute funding grant agreements with each recipient to ensure proper utilization of funds.

**ORDINANCE**

**Amending and reordaining City Code Article II. Section 2-38. Organizational Meeting and Section 2-39. Elections, Terms and General Powers and Duties of Mayor, Vice-mayor and Mayor Pro Tempore; Mayor's Veto**

**WHEREAS** Charlottesville City Council elections occur in November for positions beginning January 1 the following calendar year; and

**WHEREAS** the City Council seeks to align its Rules and Procedures with the Code of Virginia and the City Code, and to conduct its Organizational Meeting to elect a mayor and vice mayor at the beginning of the calendar year;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia **THAT** Article II. Section 2-38. Organizational Meeting, and Section 2-39. Elections, Terms and General Powers and Duties of Mayor, Vice-mayor and Mayor Pro Tempore; Mayor's Veto of the Code of the City of Charlottesville (1990), as amended is hereby amended, re-ordained and re-enacted, as follows:

**Sec. 2-38. Organizational meeting.**

The city council shall meet for organization on the first day of January after the election of its members (unless that day is a Sunday or a legal holiday, in which case it shall meet on the following day. In case of unavoidable absence from such meeting of any member elect, the meeting may be adjourned from time to time as the council may deem proper.

(Code 1976, § 2-6

**Sec. 2-39. Election, terms and general powers and duties of mayor, vice-mayor and mayor pro tempore; mayor's veto.**

- (a) The city council shall, at its first meeting in January after the regular biennial election of council members or as soon thereafter as practicable, elect one (1) of its members mayor. The mayor shall continue in office two (2) years. If a vacancy occurs in the office of mayor before the end of the term, such vacancy shall be filled as provided by section 8 of the Charter. The mayor shall have no veto power.
- (b) At the same time, the city council shall elect one (1) of its members to be vice-mayor, who shall continue in office two (2) years. If a vacancy occurs in the office before the end of their term, such vacancy shall be filled as provided by section 8 of the Charter.
- (c) The mayor shall preside at the meetings of the city council and when, from any cause, they shall be absent, the vice-mayor shall preside. In the absence of both, a mayor pro tempore may be elected.
- (d) The vice-mayor, in the absence of the mayor and while acting as mayor, shall be vested with all the rights and duties of the mayor.

(Code 1976, § 2-7; 9-7-21(1), § 2)

This ordinance shall be effective upon its approval.



**RESOLUTION**

**Approving a Memorandum of Understanding Between the City of Charlottesville and Bennett's Village for an All-Abilities Playground Project at Pen Park**

**WHEREAS**, the City's Parks and Recreation Department staff have engaged in discussions with representatives of Bennett's Village, a nonprofit community organization, to establish an All-Abilities Playground in Charlottesville Virginia, and

**WHEREAS**, after several years of discussions, it has been determined that an opportunity exists to host such a facility within the City's park system at Pen Park, and

**WHEREAS**, representatives from Bennett's Village presented their proposal to the City Council on March 18th, 2019, resulting in the adoption of a resolution on April 1st, 2019, establishing a partnership between the City and Bennett's Village, and

**WHEREAS**, in November 2019, a memorandum of agreement was entered into between the City and Bennett's Village, which was further amended in September 2021, and

**WHEREAS**, upon review, it has been determined that the current memorandum of agreement requires revision to meet current standards and provide access to additional grant opportunities, and

**WHEREAS**, the Parks and Recreation Department strongly recommends this project which will enhance recreational opportunities at Pen Park for children of all abilities,

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council hereby approves the attached Memorandum of Understanding between the City of Charlottesville and Bennett's Village for the All-Abilities Playground Project at Pen Park.

**BE IT FURTHER RESOLVED**, that the City Manager is authorized and directed to execute the Memorandum of Understanding on behalf of the City in a form approved by the City Attorney, and to take all necessary actions to implement the terms and conditions therein.

**AMENDED AGREEMENT  
BETWEEN  
BENNETT’S VILLAGE, INC. AND THE CITY OF CHARLOTTESVILLE**

**THIS AMENDED AGREEMENT** (the "Amended Agreement") is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (the "Effective Date"), by and between **CITY OF CHARLOTTESVILLE, VIRGINIA**, a body politic and municipal corporation of the Commonwealth of Virginia (sometimes referred to herein as the “City” or “Owner”), and **BENNETT’S VILLAGE, INC.**, a Virginia non-stock corporation (sometimes referred to herein as the “Operator,” "BV," or "Bennett’s Village") whose principal offices are located at 716 Shamrock Road, Charlottesville, Virginia, 22903. (The City and BV are sometimes jointly referred to as the "parties"). For and in consideration of the premises and mutual covenants hereinafter contained, and subject to the conditions herein set forth, the parties set forth these amended terms to their November 26, 2019, Memorandum of Agreement and subsequent September 8, 2021, amendment attached as Exhibit "A" and made a part hereof (collectively, the “Prior Agreement”), as follows:

**Recitals**

WHEREAS, on April 2, 2019, the Charlottesville City Council adopted a Resolution “*Establishing a Partnership between the City of Charlottesville and Bennett’s Village*” (the "Resolution"), following receipt of a proposal from Bennett’s Village to construct, at its cost and expense, a multi-generational, all-abilities play space within the City's park system at Pen Park that is designed for accessibility and inclusion (the “Project”); and

WHEREAS, on November 27, 2019, the Charlottesville City Manager executed a document titled “*Memorandum of Agreement Bennett’s Village, the ARC of the Piedmont and the City of Charlottesville, November 26, 2019*” (2019 “MOA”) containing a statement that the purpose of the MOA was to assign and identify the various responsibilities in the relationship between the City and BV with respect to the Project; and

WHEREAS, the "2019 MOA” was amended on September 8, 2021, to remove the ARC of the Piedmont from the partnership as they ceased to be a Bennett’s Village fiscal sponsor; and

WHEREAS, BV and the City desire to refine and update their respective roles relative to the Project and the project planning activities that have been underway within BV since 2019; and

WHEREAS, the parties believe that this Amended Agreement is in the respective best interests of the parties.

NOW, THEREFORE, the parties, intending to be legally bound hereby and for in consideration of the mutual covenants contained herein, do hereby set forth their agreement as follows superseding, where applicable, the Prior Agreement:

#### **Article A. PURPOSE; PROJECT SCOPE**

**I. Purpose:** This Amended Agreement shall assign and identify the various rights, responsibilities and obligations in the relationship between the City and BV for the design, development, future operation, and ownership of an All Abilities Play Space (the "Play Space") and ancillary facilities for the project as depicted within a Concept Plan prepared by Mahan Rykiel Associates, Inc., dated February 5, 2020 (the "Project").

**II. Scope:** The Project is a multipart development that will be undertaken in several phases (each a "Phase" and, collectively, the "Phases"), upon approximately four (4.0) acres of land within Pen Park (See Exhibit "B" – Total Project Area). The area to be developed by BV within each Phase shall first be leased to BV under terms set forth within attachments to this Agreement (See Exhibit "C" – Phasing).

The City and BV agree to enter into a new lease for each Phase of the Project (each, a "Phase Lease") consistent with the model Phase Lease. Once each respective Phase is completed, each respective Phase Lease shall, as provided herein, be terminated and, simultaneously, all rights and interest to the equipment, facilities, improvements, and fixtures (collectively, the "EFIF") constituting the respective completed Phase of the Project's Play Space shall be contributed and transferred to and accepted by the City. This contribution, transfer and acceptance shall be affected by gift deed that will identify, as applicable, the representations of BV and the gift conditions of the City.

**III. Phasing of Development:** Subject to the commitment of the parties to the Project in its entirety as provided herein, the parties acknowledge that each Phase shall be deemed a distinct and independent part of the Project during a distinct time period. During each Phase Lease, the City shall lease to BV and BV shall have the exclusive right to enter onto and develop the park land owned by the City in accordance with the terms and conditions of this Amended Agreement, the Project, and the current applicable Phase Lease.

Upon completion of the development in the Play Space for each Phase of the Project, BV shall provide notice to the City of their intention to terminate the applicable Phase Lease within sixty (60) days (a "Phase Lease Termination Notice") that shall include all documentation required by Article B, Section VII. Within this sixty (60) day period, the Parties shall review and inspect the EFIF built during the current Phase. Upon approval by the City of the EFIF as being consistent with the Project (such approval not to be

unreasonably withheld, delayed or conditioned, the parties agreeing that certification by the Contractor (as defined below) to both the City and BV of construction compliance of the EFIF with the respective Play Space as described in the Project shall constitute a presumption of approval), BV shall transfer the EFIF by Gift Deed to the City. Once (1) a Phase has been completed, (2) the Phase Lease terminated and a (3) contribution effected via Gift Deed, the terms of this Amended Agreement shall no longer apply to the completed Phase and all rights, liabilities and interest in the leased property constituting the respective Phase Lease together with the EFIF shall revert to the City and be the sole responsibility of the City to maintain and operate the Play Space consistent with the respective Gift Deed. The City shall execute for BV documents accepting the completed work as a contribution, shall terminate the Phase Lease and release any contractual obligations relating to, inter alia, maintaining insurance coverage over the terminated Phase Lease.

**Phase Funding Requirement, Notice to Proceed, and Term:** The parties acknowledge and agree that, as a condition of commencing construction on any Phase of the Project, BV must demonstrate that it has sufficient funding to complete the distinct Phase prior to the City's agreement to issue a notice to proceed (the "Notice to Proceed"). The City's agreement to issue a Notice to Proceed may be based on BV's current cash and securities, third party pledges, letters of credit or any other commercially reasonable basis but the City's agreement may not be unreasonably withheld, delayed, or conditioned, the parties agreeing that current dedicated cash assets alone or in combination with a letter of credit shall be presumed to be sufficient for the City's approval. As conditioned above, the Notice to Proceed shall be issued within thirty (30) days of BV's written request to the City to proceed with construction (a "Request to Proceed") provided that BV has also provided the documentation described in Article B, Section III below. Each Phase Lease shall have an Initial Term of two (2) years with the right to a two (2) year extension.

**IV. Subsequent Phase Construction, Funding and Term:** The parties agree that subsequent Phases shall require distinct budgets, construction plans, and a new Phase Lease approved by the Charlottesville City Council in accordance with the laws of the Commonwealth of Virginia and this Amended Agreement. As provided herein, the parties shall mutually agree upon the budget and construction plans prior to the execution of a new Phase Lease.

Notice to Proceed from the City to BV shall, as provided above, occur only after approval of all budgets, construction plans and a fully executed Phase Lease. The Parties mutually agree that each Phase Lease shall substantially conform to the form provided in Exhibit "D" and shall be subject to review and approval by City Council in accordance with the Laws of the Commonwealth of Virginia and this Amended Agreement.

## **Article B. RESPONSIBILITIES OF BENNETT'S VILLAGE**

BV shall be responsible for the following activities:

**I. Plans and Specifications:**

For each Phase of the Project, BV shall, except as otherwise provided herein, be responsible for payment of all costs and expenses necessary for preparation of concept design plans, construction plans, specifications, and services necessary for or in connection with securing applicable governmental permits and approvals; provided, however, that the City shall waive all filing fees for the City of Charlottesville and otherwise provide Bennett's Village with all waivers from fees and taxes as are accorded to entities recognized as tax-exempt under Section 501(c)(3) of the Internal Code of 1986, as amended.

Construction plans (the "Construction Plans") shall include, as necessary and/or required by relevant City, State or Federal codes existing at the time of plan submittals, the location and materials for buildings, structures and equipment to be constructed or installed, in specific locations, and the manner in which the development site will be connected to and accessed from other sections of Pen Park (a/k/a "site development plans"); and, as applicable, erosion and sediment control plans; stormwater management plans; water, sewer and electric utility plans (both temporary, to serve construction activities, and permanent); and necessary wildlife conflict resolution strategies.

Final Construction Plans shall include measures by which BV and its contractors shall minimize disruption to Pen Park and the uses and activities occurring within the park outside of the Leased Premises. Measures may include, but shall not necessarily be limited to, restricted hours of construction or land-disturbing activity; alternative pedestrian access in full compliance with all ADA requirements, parking, or traffic arrangements; sound dampening measures; or tree protection measures.

**II. Cost Estimates; Payment for Labor, Materials and Supplies:**

For each Phase of the Project, BV shall provide the City with detailed cost estimates (which shall include separate estimates for construction, construction contingencies and construction administration services). Such cost estimates shall be developed during the conceptual development and schematic design phases of each Phase of the Project and verified prior to commencement of any construction or installation activities for a respective Phase.

During construction/installation of each Phase of the Project, BV shall timely pay all its contractors, subcontractors, materialmen, and suppliers all amounts due to them, and BV shall not suffer or allow any mechanics or other liens to attach to any City park land.

**III. Request(s) for Notice to Proceed:**

For each Phase of the Project, when BV is ready to commence the Work, BV will send a written communication to the City (a "Request to Proceed"), requesting the City to issue a written Notice to Proceed according to the criteria established above.

BV's Request to Proceed to the City shall include the following documentation:

- 1) the final cost of the Project Phase, as evidenced by a binding contract for construction (“Contract Price”);
- 2) a contract for administration of the contract for construction unless included in the contract with a licensed General Contractor;
- 3) evidence that BV has a Budget for the Phase, including, without limitation: sufficient funds (cash on hand, pledged funds, letter of credit, etc. according to the standards and presumptions described above) to cover the Contract Price including a reasonable construction contingency/ reserve of no more than ten percent (10%) of the Contract Price;
- 4) sufficient funds (cash on hand, pledged funds, letter of credit, etc. according to the standards and presumptions described above) to cover the cost of construction administration, if applicable and distinct from the Contractor; and
- 5) a final Schedule for construction/ installation of the work in such Phase.

**IV. BV Project Coordinator:** BV shall appoint a Project Coordinator to interact with the City regarding the Project.

**V. Contractors:**

BV will be responsible for construction/installation of the Project using only contractors and subcontractors licensed and otherwise authorized to do business within the Commonwealth of Virginia. The Contractor and, if applicable, any replacement Contractor must be a licensed General Contractor in the Commonwealth of Virginia.

**VI. Documentation of Completion, Donation and Acceptance by the City:**

Upon commencement of construction of each Phase of the Project, it shall be the responsibility of BV to require its contractors and their subcontractors (“Contractors”) to construct and install all building, structures and equipment in accordance with the approved construction/ installation plans and specifications (“Project Approvals”).

In circumstances where a deviation from the Project Approvals is necessary due to unanticipated conditions or other reason, the Contractors shall be required by BV to promptly indicate on the face of the Project Approvals the precise change in location, materials, or other deviation and BV shall promptly submit the same to the City for review (“Redlined Plans”).

Upon completion of each Phase of the Project, BV will submit to the City a Phase Lease Termination Notice that shall include (i) a set of Record Drawings (As-Builts) and related documentation, consisting of the actual, as-built conditions, proof that payment in full has been made to all contractors and suppliers who provided labor and materials for the completed work; (ii) evidence of the transferability/assignability of all warranties to the City, and (iii) a written Contribution of all of the Work and improvements which have been completed and installed within that particular Phase.

**VII. Annual reports prior to Project Completion; Annual Audits:**

BV shall provide a written annual report to the City on or before October first of each calendar year, providing information to City Council regarding major Project milestone achievements, status of fundraising efforts, a budget-to-actual expenditures-report for each Project Phase then remaining in progress, and a summary and report of operations and goals for the ensuing year. Additionally, within three (3) months of the end of BV's annual financial reporting period, BV shall provide to the City a written report specifying the amount of funding received by BV from all sources during the preceding year and specifying the amount of funding expended by BV for and in connection with any applicable Phase of the Project during the preceding year. This document shall be a public record.

**Article C. RESPONSIBILITIES OF THE CITY:**

The City shall be responsible for the following activities in connection with the Project:

**I. Plans and Specifications:**

For each Phase of the Project, the City will, at its sole cost and expense, promptly review proposed concept designs and proposed Construction Plans prior to BV's official submission of the plans for governmental permits or approvals. The City will offer comments and may request changes to the construction plans and specifications.

**II. Cost Estimates:**

For each Phase of the Project, the City will, at its sole cost and expense, promptly review all cost estimates (labor and materials for construction/ installation, construction/installation contingency, and construction/installation administration). If the City is concerned about the accuracy or completeness of the cost estimates, the City and BV shall meet in person to resolve the concerns.

**III. City Notice to Proceed:**

For each Phase of the Project, the City will, within sixty (60) days of BV's request for a new Phase Lease, execute a new Phase Lease with BV and promptly issue a written Notice to Proceed according to the requirements described above for the next Phase to authorize commencement of land disturbing activity, construction, and equipment installation. This Notice to Proceed is expressly conditioned as provided above.

**IV. City Project Coordinator:**

The City will, at the City's sole cost and expense, designate a Project Coordinator, who will be a City employee tasked with monitoring the progress of the Project, and assisting BV with understanding all the permits, governmental approvals, and requirements necessary for the progress of the Project.

**V. Documentation of Completion; Donation and Acceptance by the City:**

Upon completion of each Phase of the Project, the City will review a set of record (as-built) drawings presented by BV along with (i) a written offer of donation and dedication to the City of all the Work and improvements which have been completed and installed within that Phase, and (ii) documentation confirming transfer/ assignment of all warranties to the City. If the as-built plans demonstrate that all the work was constructed and installed in accordance with the approved plans for the Project, and upon being satisfied that all warranties will be transferred or assigned to the City, the City will accept the respective Contribution by Gift Deed as provided herein and provide a written confirmation of acceptance of ownership and maintenance of the Work. Thereafter, the City and BV will terminate the Phase Lease and will be responsible for normal operating expenses such as utilities, custodial services, and routine repairs and maintenance activities.

**VI. Hours of Operation:**

Hours of operation of those portions of the park included in the project shall be 6:00 a.m. to 10:00 p.m. unless modified by the City's Parks and Recreation Director.

**Article D. GENERAL TERMS**

The Parties recognize that this Agreement is designed for the purpose of governing a multi-year relationship between the City and BV for the long-term implementation, development and operation of this Project at Pen Park.

**I. Modification:**

This MOA will be reviewed and updated as needed to facilitate the efficient development of the Play Space and the Project. The provisions of this Amended Agreement may be modified by the parties by mutual consent set forth in a written addendum approved and signed by the parties in the same manner and with the same formality as this Amended Agreement.

**II. No Assignment of Rights:**

BV shall have no right to assign or sublease, in any manner or fashion, any of its rights, privileges, or interest accruing to it under this Agreement or any attached Phase Lease to any other individual or entity without the prior written consent of the City. The City's consent shall not be unreasonably withheld if BV proposes an assignment to a successor charitable organization and the assignee demonstrates to the City's satisfaction that it is in all respects capable of performing all the obligations hereunder.

**III. Funding Contingency:**

Both parties acknowledge that the obligations and responsibilities of both BV and the City under this Amended Agreement are expressly made contingent upon the availability of funding according to the standards provided above and, in the case of the City, upon both the availability and the appropriation of funding by the City Council.



**IV. Notices:**

Except as otherwise provided herein, notice shall be given either by first class mail, postage prepaid, deposited in the United States Postal Service, or by prepaid overnight delivery service requiring acknowledgement of receipt. While the parties may authorize subsequent use of e-mail notices for other purposes under this Amended Agreement, the parties agree that Notice to Proceed, Request to Proceed, and the Phase Lease Termination Notice (or subsequent Phase termination notices) may all be provided by e-mail.

Notices given under this Amended Agreement shall be addressed as follows:

- 1) City's designated representative to receive all notices and correspondence is the City Manager, said notices and correspondence to be given to the following address: P.O. Box 911, Charlottesville, Virginia 22902 (mail), or City Hall, 605 East Main Street, Second Floor, Charlottesville, Virginia, 22902 (delivery) a copy of said notice shall also be sent to the Charlottesville City Attorney at PO Box 911, Charlottesville, VA 22902.
- 2) BV's designated representative to receive all notices and correspondence regarding this Lease is its Executive Director, said notices and correspondence to be given to the following address: 716 Shamrock Road, Charlottesville, Virginia 22903.
- 3) Either party may change its designated representative or address(es) by giving written notice to the other party as provided in this paragraph.

**V. No Waiver of Rights:**

No failure on the part of the City to enforce any of the terms or conditions set forth in this Amended Agreement shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver of a breach of any covenant in this Agreement shall be construed as a waiver of any succeeding breach of the same covenant. No delay or failure by either party to exercise any right under this Amended Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

**VI. Entire Agreement**

Except as otherwise expressly provided herein, this Amended Agreement contains the entire agreement between the parties as of the effective date specified herein and it supersedes all prior agreements and understandings of the parties, whether verbal or written, as to matters that are set forth within this Amended Agreement. There are no collateral agreements, stipulations, promises or undertakings whatsoever upon the respective parties, in any way touching the subject matter of this instrument, which are not expressly contained herein within this document, or the Exhibits and Addendum incorporated herein, if any. The execution of this Amended Agreement has not been induced by either party by representations, promises or understandings other than those expressly set forth herein.

**VII. Non-Appropriations Clause**

Payment and performance obligations, if any, of the City, beyond the initial year of this Amended Agreement, are expressly conditioned upon the availability of and appropriation by the City of public funds therefor in each subsequent fiscal year. When public funds are not appropriated or are otherwise unavailable to support continuation of performance by the City in a subsequent fiscal period, this Amended Agreement's payment requirements and the City's obligations hereunder shall automatically expire, without liability or penalty to the City.

**VIII. Additional Insured Status:**

BV shall cause the City to be identified as an "additional insured" under all insurance policies and coverages required by this Amended Agreement.

**IX. Record Keeping:**

In accordance with income tax accounting standards, BV shall maintain books and records pertaining to the funds received from the City and amounts expended by it in connection with this Amended Agreement. BV shall maintain such books and records for a period of at least three (3) years following the expiration or earlier termination of this Amended Agreement. Upon request, the City shall be entitled, at its own expense, to obtain an audit of all funds received and expended by BV under this Amended Agreement. Upon receipt of notice that the City desires an audit, BV shall make its books and records available to the City and its auditor(s) and shall cooperate with the audit.

**X. Public Disclosure of Agreement Documents:**

BV acknowledges and understands that this Amended Agreement, and all related public proceedings and records, shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.

**XI. Independent Contractor**

Neither BV, nor its agents, employees, assignees or subcontractors shall be deemed employees or agents of the City by virtue of any services performed pursuant to this Amended Agreement or the contractual relationship established hereby. BV shall have sole responsibility for its staff, including their work, personal conduct, directions and compensation.

**XII. Binding Effect of Agreement**

The terms, provisions and conditions of this Amended Agreement shall bind and inure to the benefit of the respective parties hereto and to their representatives, successors, and (where permitted by this Amended Agreement) their assigns.

**XIII. Severability**

If any term, provision or condition of this Amended Agreement, or the application thereof to any person or circumstances, shall be held by a court of competent

jurisdiction to be invalid or unenforceable, the remainder of this Amended Agreement, and the application of any term, provision or condition contained herein to any person or circumstances other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

**XIV. Interpretation of Provisions**

In the event of any conflict, discrepancy or inconsistency between this document and any other documents which have been incorporated into this document by reference or made exhibits or attachments hereto, then the provisions set forth within the body of this document shall govern the parties' agreement.

**XV. Headings**

Section, article and paragraph headings contained within this Amended Agreement have been inserted only as a matter of convenience and for reference, and they in no way define, limit, or describe the scope or intent of any term, condition or provision of this Amended Agreement.

**XVI. Choice of Laws:**

This Amended Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. All litigation arising out of this Amended Agreement shall be commenced and prosecuted in the federal, state or local court(s) having jurisdiction within the City of Charlottesville, Virginia.

IN WITNESS WHEREOF, the parties do hereby set forth their signatures, representing that the individuals who affix their signatures hereto have been duly authorized to bind each party to the terms and conditions of the foregoing Amended Agreement:

BV: \_\_\_\_\_ CITY  
By: \_\_\_\_\_ By: \_\_\_\_\_  
Title: \_\_\_\_\_ Title: City Manager

Approved As to Form: \_\_\_\_\_  
City Attorney or designee

Funds Are Available: \_\_\_\_\_  
Director of Finance or designee

**PHASE ONE LEASE AGREEMENT BY AND BETWEEN THE CITY OF  
CHARLOTTESVILLE AND BENNETT'S VILLAGE, INC.**

THIS GROUND LEASE executed in PHASES (hereafter the "**Phase Lease # \_\_\_\_\_ One (1) \_\_\_\_\_**") and is entered into this \_\_\_first \_\_\_\_\_ day of \_\_\_April\_\_\_\_\_, by the CITY OF CHARLOTTESVILLE (hereafter the "City") and BENNETT'S VILLAGE, INC., a Virginia non-stock corporation (sometimes referred to herein as the "Operator," "Lessee," "BV," or "Bennett's Village") authorized to do business in the Commonwealth of Virginia (hereafter "BV or Lessee") (the City and the Operator are sometimes individually referred to herein as a "party" and sometimes jointly referred to herein as the "parties.")

1. **Leased Property:** The City, as the title holder of the subject property, in consideration of the rents and covenants to be paid and performed by BV, leases to the Lessee and the Lessee leases a portion of the property commonly known as Pen Park in the City of Charlottesville, being within the area described on **Exhibit A**, attached hereto and incorporated herein by reference, (hereafter the "Leased Property").

Effective on the date the City issues to BV a written Notice to Proceed with construction/ installation of each phase of the Project ("Phase Commencement Date") which Notice to Proceed will not be unreasonably withheld, delayed, modified or conditioned, BV, as lessee shall have the right of use and possession of the premises described within **Exhibit A** to this Agreement for the term of the this phase lease, or until the date on which the City has accepted the completed work within Phase 1, whichever first occurs ("Expiration Date").

The parties further acknowledge and agree that, before and after the Notice to Proceed, BV, its agents, contractors and employees may enter upon the Property (including permitted ingress and egress through the Property as directed by the City) and perform all inspections, examinations, investigations, tests and undertakings with respect to the Leased Property that BV deems appropriate to confirm the suitability of the Leased Property for the construction and operation of the current phase project.

2. **Rent:** Lessee shall pay to the City nominal rent at the rate of \$1.00 per year, the receipt of which is hereby acknowledged.

**PHASE ONE LEASE AGREEMENT BY AND BETWEEN THE CITY OF  
CHARLOTTESVILLE AND BENNETT'S VILLAGE, INC.**

3. **Title to Leased Property:** The City represents and warrants to the Lessee that it has the power and authority to execute this Lease and to carry out and perform all covenants to be performed by the City under this Lease.

4. **Condition of Leased Property and Lessee's Right of Entry:** The Leased Property is currently used as active and passive public recreational areas under the supervision of the City Department of Parks and Recreation. The City makes no representation or warranty as to the condition or suitability of the Leased Property for the intended purpose of this Lease prior to or at the time of the execution of this Phase Lease # 1. Lessee accepts the Leased Property "as is" on the effective date hereof. Lessee further accepts the Leased Premises in "as is" condition, subject to all existing utilities and all easements of record.

Lessee shall have the right to enter onto the Leased Property for the purpose of conducting, at Lessee's own risk, cost and expense, surveys, soil borings, engineering studies and other similar examinations necessary to determine the suitability of the Leased Property for the Lessee's intended use. Lessee shall provide reasonable notice to the City Department of Parks and Recreation prior to entering the property and shall exercise this right of entry at all times so as not to unreasonably interfere with the normal operation of Pen Park. If Lessee determines, as a result of its studies, that the Leased Property is not suitable for its intended use, Lessee may terminate this Lease prior to the Commencement Date, and neither party shall have any further rights or obligations hereunder. In the event of such termination, Lessee shall, at its own expense, restore the Leased Property to the condition in which it existed prior to any changes made during its studies. Rights, duties and obligations, if any, of indemnity or insurance shall be as provided in the Amended Agreement.

5. **Term and Termination:** The initial term of this Lease shall be for a period of two (2) years, which shall begin on the date specified in the notice from Lessee to the City required below (the "Commencement Date") and continuing thereafter through the first day of April           , 2024           . If a Phase is commenced and not completed during the Initial Term, this Phase Lease shall be automatically extended for an additional two (2) year term according to the same terms and conditions. Each subsequent Phase Lease shall have an Initial Term of two (2) years with the same right to a two (2) year extension. The parties acknowledge and agree that any Phase Lease may be terminated by Lessor, or Lessee pursuant to a Phase Lease Termination Notice as provided in the Amended Agreement or as otherwise provided herein or in the Amended Agreement.

**PHASE ONE LEASE AGREEMENT BY AND BETWEEN THE CITY OF  
CHARLOTTESVILLE AND BENNETT'S VILLAGE, INC.**

6. **Use:** Subject to the Lessee's compliance with all applicable local, state and federal laws and regulations, the City hereby grants permission to the Lessee to occupy the Leased Property for the purposes of constructing a recreational area including the design, development, and future operation of the Play Space and ancillary facilities for the Project, with such amenities as are provided for in the Amended Agreement.

7. **Purpose:** Unless otherwise agreed by the parties, the use of the Play Space constructed shall be primarily for the benefit of residents of the City of Charlottesville and Albemarle County and such other visitors to the City as a recreational facility.

8. **Construction:** Subject to delays beyond the reasonable control of the Lessee, the Lessee shall substantially complete construction of the facilities within Phase 1 and obtain approval and acceptance of the constructed facilities within the Leased Property. All construction shall be conducted as described in the Amended Agreement.

9. **Quiet Enjoyment:** The Lessee, on paying the rent and observing and keeping all covenants, warranties, agreements and conditions of the Lease, shall quietly have and enjoy the Leased Property during the Lease Term and any extension thereto.

10. **Approval of Improvements:**

A. No improvements of any kind shall be made to the Leased Property unless and until Lessee shall have obtained all required local, state and federal governmental approvals and permits, and all such improvements shall be undertaken and constructed in strict compliance with all applicable City, state and federal rules, regulations and laws; provided, however, that the City shall waive all filing fees for the City of Charlottesville and otherwise provide Bennett's Village with all waivers from fees and taxes as are accorded to entities recognized as tax-exempt under Section 501(c)(3) of the Internal Code of 1986, as amended.

B. The City and the Lessee acknowledge that the Lessee's intended use of the Leased Property may require compliance with state and local laws including but not limited to zoning, special use permit or site plan approval for all or any portion of the Leased Property. The City Department of Parks and Recreation's consent shall not be construed as a representation that the City will grant or approve any application submitted by Lessee, which is otherwise within the City's discretion to approve or deny.

**PHASE ONE LEASE AGREEMENT BY AND BETWEEN THE CITY OF  
CHARLOTTESVILLE AND BENNETT’S VILLAGE, INC.**

C. Lessee shall give written notice to the City’s Director of Parks and Recreation in advance of using any pesticides, cleaners, fertilizers, or other similar products within the Leased Premises, and upon receipt of such notice the Director will promptly advise Lessee of City policies regarding the use of such products on or within City-owned property. Upon being notified of City policies, Lessee shall comply with the requirements of the policies.

D. Except as otherwise provided herein or in the Amended Agreement, Lessee shall not commence any land disturbing or construction activity, unless and until all required governmental permits and approvals for such activity(ies) have been obtained from the Commonwealth of Virginia and the governmental authorities of the City of Charlottesville, as may be required. Unless otherwise agreed upon by both parties, Lessee shall be responsible for all costs and expenses associated with obtaining such approvals; provided, however, that the City shall waive all filing fees for the City of Charlottesville and otherwise provide Bennett's Village with all waivers from fees and taxes as are accorded to entities recognized as tax-exempt under Section 501(c)(3) of the Internal Code of 1986, as amended. Such permits and approvals may include but are not necessarily limited to rezoning or special use permit, final site plans, erosion and sediment control plans, stormwater management plans, a state construction general permit, permits required by the Uniform Statewide Building Code or the Virginia State Fire Prevention Code, and any amendments or modifications of such permits and approvals. As evidenced by the signature of the City Manager to this Lease, BV is hereby authorized to submit any required permit application(s) to any governmental authority relative to any area(s) of land owned by the City and involving the Project.

E. As provided in the Amended Agreement, the Lessee shall, at its own expense, engage licensed professionals as necessary to conduct all required site evaluations and surveys, to include, but not necessarily limited to, public records, easements, utility locations, plat surveys, existing conditions surveys, soils investigations and environmental investigations. Construction Plans shall include, as necessary and/or required by relevant City, State or Federal codes existing at the time of plan submittals, the location and materials for buildings, structures and equipment to be constructed or installed, in specific locations, and the manner in which the development site will be connected to and accessed from other sections of Pen Park (a/k/a “site development plans”); and, as applicable, erosion and sediment control plans; stormwater management plans; water, sewer and electric utility plans (both temporary, to serve construction activities, and permanent); and necessary wildlife conflict resolution strategies. Final

**PHASE ONE LEASE AGREEMENT BY AND BETWEEN THE CITY OF  
CHARLOTTESVILLE AND BENNETT'S VILLAGE, INC.**

Construction Plans shall include measures by which BV and its contractors shall minimize disruption to Pen Park and the uses and activities occurring within the park outside of the Leased Premises. Measures may include, but shall not necessarily be limited to, restricted hours of construction or land-disturbing activity; alternative pedestrian access in full compliance with all ADA requirements, parking, or traffic arrangements; sound dampening measures; or tree protection measures. All Construction Plans must be completed consistent with the approval process described in the Amended Agreement.

F. The City agrees to grant to Lessee standard easements to and from the Leased Property for any work to be completed. Lessee shall have a right of access to and from the Leased Property over existing Pen Park ingresses and egresses.

G. The Lessee shall have the right to place signs within the Leased Property and at such other location at Pen Park as may be permitted by the City Parks and Recreation Department.

11. **Existing Improvements within the Leased Property:** If applicable, Lessee shall, at its own expense, be responsible for the removal and disposal of any existing structures or improvements on the Leased Property at the time of the execution of this Lease. Lessee shall be under no obligation to replace any improvements removed pursuant to this provision. In lieu of disposal by the Lessee, the City may, in its discretion, retain ownership of any materials, equipment or structures removed by the Lessee. In the event the City elects to retain ownership, any extra cost for removal over and above demolition costs shall be borne by the City.

12. **Reservation of Easements:** The City reserves to itself, while this Lease is in effect, easements over and for all existing utilities within the Leased Property, including but not limited to water, sanitary sewer, storm water sewer, electrical power and gas if applicable. At the option of the City, Lessee shall execute standard deeds of easement granting the City adequate access to any existing utilities within the Leased Property. Any relocation of existing utilities required by construction of the Facility and related improvements shall require the prior approval of the City of Charlottesville, which approval shall not be unreasonably withheld, and shall be accomplished at the sole expense of the Lessee.



**PHASE ONE LEASE AGREEMENT BY AND BETWEEN THE CITY OF  
CHARLOTTESVILLE AND BENNETT'S VILLAGE, INC.**

13. **Existing Recreation or Parking Facilities:** All construction shall be performed in a manner so as not to materially reduce or interfere with the City's or the City Parks and Recreation Department's existing recreational or parking amenities located outside of the Leased Property at Pen Park; provided, however, that the Lessee and the City, through its Department of Parks and Recreation, may agree on certain site or use restrictions during the construction period. The City's Director of Parks and Recreation, after consultation with the City Manager, may issue a written directive requiring unreasonably disruptive construction/installation activities to immediately be stopped; thereafter, the period during which such disruptive land disturbing or construction activities are required to be stopped shall not be considered as good cause for any extension(s) of time requested in accordance with this Lease or this Agreement.

14. **Entry Upon Leased Property:** City or its agents may enter upon the Leased Property at all reasonable times to examine their condition and use, so long as that right is exercised during regular business hours in a manner that does not interfere with the Lessee in the conduct of its business within the Leased Premises.

15. **Title, Liens:** Title to the ground shall remain in the name of the City. Title to the Facilities constructed by the Lessee shall be titled in the name of the Lessee, except as otherwise provided herein. The Lessee agrees that the Leased Property shall not be encumbered by any mortgage, lien (mechanic's lien, materialmen's lien or other lien), pledge other encumbrance during the Term of the Lease. If any such lien or notice of lien rights shall be filed with respect to the Leased Property, the Lessee shall immediately take such steps as may be necessary to have such lien released and shall permit no further work to be performed at the Leased Property until such release has been accomplished.

16. **Financial Assurances and Approvals:** Financial assurances and approvals shall be as required and granted as provided in the Amended Agreement.

17. **Maintenance / Operational Expenses:**

A. Upon the date of commencement of construction of the Facility and continuing throughout the Term of the Phase Lease or its termination, whichever first occurs, the Lessee shall, at its own cost and expense, maintain and keep the Leased Property, whether improved or unimproved, in a reasonably clean, attractive condition, and not commit or allow any waste or damage to be committed on or to any portion of the Leased Property. The Lessee

**PHASE ONE LEASE AGREEMENT BY AND BETWEEN THE CITY OF  
CHARLOTTESVILLE AND BENNETT'S VILLAGE, INC.**

shall be responsible for all costs associated with the ongoing maintenance, operation and repair of the Leased Property.

B. As part of its maintenance responsibilities Lessee agrees to comply fully with any applicable governmental laws, regulations and ordinances, limiting and regulating the use, occupancy or enjoyment of the Leased Property, as supplemented and modified by duly enacted ordinances of the City of Charlottesville.

18. **Utilities and Services:** The Lessee shall be responsible for and pay all costs and charges for utilities and services, if any, in connection with the Lessee's occupancy of the Leased Property including, but not limited to, permits and connection charges, trash removal and other utilities or services; provided, however, that the City shall waive all filing fees for the City of Charlottesville and otherwise provide Bennett's Village with all waivers from fees and taxes as are accorded to entities recognized as tax-exempt under Section 501(c)(3) of the Internal Code of 1986, as amended. All the foregoing utilities and services shall be instituted and obligated for in the name of the Lessee, and the City shall have no responsibility whatsoever for the furnishing or cost of the same.

19. **Taxes and Assessments:** Real property taxes shall not be imposed against the leasehold interest of Lessee if Lessee is exempt from the payment of real property taxes.

20. [Intentionally Omitted.]

21. **Damage or Destruction of the Leased Property:** The City shall have no responsibility for any damage caused to the Leased Property or any facilities constructed therein. City Employees or agents shall have no responsibility for any damage caused to the Leased Property or any facilities constructed therein except that caused by the gross negligence or willful misconduct of the City's employees and agents. The Lessee agrees that all property of every kind and description kept, stored or placed on the Leased Property shall be at the Lessee's sole risk and hazard and that the City shall not be responsible for any loss or damage to any of such property resulting from fire, explosion, water, steam, gas, electricity, the elements or otherwise, wherever originating.

22. [Intentionally Omitted.]

**PHASE ONE LEASE AGREEMENT BY AND BETWEEN THE CITY OF  
CHARLOTTESVILLE AND BENNETT'S VILLAGE, INC.**

23. **Assignment:** The Lessee shall have no right to assign, in any manner or fashion, any of the rights, privileges or interests accruing to it under this Lease to any other individual or entity, without the prior written consent of the City, which consent shall not be unreasonably withheld in the event of a proposed assignment to a successor non-profit charitable organization. In the event of assignment, the Lessee shall remain fully liable and responsible for all the obligations imposed by this Lease unless it is otherwise agreed in writing by the City.

24. **Sublease:** The Lessee may not sublet the Leased Property.

25. **Nondiscrimination:** During the Term of this Lease, the Lessee agrees that it will not discriminate against any person in its membership, programs or employment because of race, religion, color, gender, sexual orientation, national origin, disability, financial circumstances or any other basis prohibited by law.

26. **Drug-Free Workplace:** During Term of this Lease, the Lessee is to provide a drug-free workplace for the Lessee's employees, and to provide notification of this policy to its employees and applicants for employment. For the purposes of this Paragraph, "drug-free workplace" means a workplace where employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the term of this Lease.

27. **Insurance:** The parties acknowledge and agree that BV is a charity qualified as tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and has no employees. It is the intention of the parties that BV will complete the Project through contracts with properly licensed and properly insured contractors. The parties further acknowledge and agree that the Project is unique as it involves no residential or commercial construction and few, if any, utility connections. As a result, the parties shall evaluate the level and type of insurance to be required for each Phase Lease issued under the terms of the Amended Agreement and shall, prior to the execution and delivery of each Phase Lease, mutually agree to such insurance terms that may vary among Phase Leases and may include insurance obligations of BV, its contractors or both. Prior to commencing any construction of the Project, the Lessee, at its sole cost and expense, shall secure and maintain (or cause to be secured and maintained) throughout the Term of each Phase Lease, the following insurance coverage, individual components of which may be waived or amended if agreed to, in writing, by both parties:

**PHASE ONE LEASE AGREEMENT BY AND BETWEEN THE CITY OF  
CHARLOTTESVILLE AND BENNETT'S VILLAGE, INC.**

(a) As applicable to BV, its contractors or both, Workers' Compensation insurance, as may be required pursuant to the provisions of Chapter 8 (Section 65.2-800 et seq.) of Title 65.2 of the Code of Virginia, 1950, as amended.

(b) Commercial General Liability Insurance: \$1,000,000.00 general aggregate limit (other than products/completed operations); \$1,000,000.00 aggregate limit products/completed operations; \$1,000,000.00 personal injury and advertising injury limit liability; \$1,000,000.00 each occurrence limit; Builder's Risk Insurance: \$1,000,000.00; Automobile Liability, \$1,000,000.00; \$100,000.00 fire damage limit (any one fire); and \$10,000.00 medical expenses limit (any one person). The required insurance coverages, and the required limits of the insurance may be reviewed by the parties and amended or waived from time to time by mutual agreement; provided, however, that all agreed-upon insurance shall be issued by one or more companies authorized to underwrite and issue insurance in the Commonwealth of Virginia.

(c) Fire and Extended Coverages, providing coverage against loss, damage, or destruction by fire and such other hazards, under policies of insurance commonly referred to and known as "extended coverage."

(d) Each insurance policy required by paragraphs (a)-(c) above, shall be written or endorsed (or caused to be written or endorsed) to preclude the exercise of the right of subrogation against the City and, except for Workers' Compensation Insurance, shall name the City as an additional insured. Each such insurance policy shall be endorsed to include a requirement that, should any of the insurance policies be canceled before the expiration date thereof, the issuing insurance company will mail written notice of such cancellation to the City at least ten (10) days in advance; upon receipt of any notice, verbal or written, that the said insurance is subject to cancellation, the Lessee shall immediately (within five (5) business days) notify the City. In the event Lessee fails to comply with the requirements of this section, the City shall have the right to require the Lessee to suspend use of the Leased Premises until such time as the requirements of this paragraph are met.

**PHASE ONE LEASE AGREEMENT BY AND BETWEEN THE CITY OF  
CHARLOTTESVILLE AND BENNETT'S VILLAGE, INC.**

(e) The Lessee shall provide the City with one or more certificate(s) of insurance confirming the insurance required by this Lease Agreement. The Workers' Compensation Insurance and Commercial General Liability Insurance certification shall be provided to the City by the Lessee upon the Commencement Date of this Lease, then again (without demand) on or before the expiration date of any policy or upon request by the City, on each anniversary of the Commencement Date of this Lease. The Fire and Extended Coverages certificate shall be provided to the City by the Lessee prior to the commencement of construction of Phase 1, then again (without demand) on or before the expiration date of any policy and, upon request by the City, on each subsequent anniversary of the Commencement Date of this Lease. Upon demand by the City, Lessee shall furnish (or cause to be furnished) copies of the Lessee's insurance policies, together with the required endorsements as provided herein.

27. **Annual Report; Financial Records**: These requirements are as provided in the Amended Agreement.

28. **Default**: Each of the following occurrences relative to the Lessee shall constitute default:

- (a) Failure or refusal by the Lessee to make the timely payment of rent or other charges due under this Lease when the same shall become due and payable, provided the City has given the Lessee fifteen (15) days written notice of the same. Notwithstanding the foregoing, the City acknowledges receipt of payment of all rent.
- (b) Unless otherwise dismissed within sixty (60) days of any of the following to occur, the filing or execution or occurrence of an insolvency proceeding by or against the Lessee; or an assignment for the benefit of creditors; or a petition or other proceeding by or against the Lessee for the appointment of a trustee or a receiver or for the liquidation of any of the Lessee's property; or a proceeding by any governmental authority for the dissolution or liquidation of the Lessee.
- (c) Failure by the Lessee in the performance or compliance with any of the terms, covenants, or conditions provided in this Lease, which failure continues uncured for a period of six (6) months after written notice from the City to the Lessee specifying

**PHASE ONE LEASE AGREEMENT BY AND BETWEEN THE CITY OF  
CHARLOTTESVILLE AND BENNETT'S VILLAGE, INC.**

the items in default; provided, however, if such failure is of a type that is not reasonably capable of being cured within six (6) months, such six (6) month period shall be extended for so long as the Lessee is making diligent efforts to cure such default; or

- (d) Any change in the operation, charter, or ownership of the Lessee (including, but not limited to, loss of Internal Revenue Code 501 (c)(3) tax-exempt status) incompatible with the purpose of this Lease, or a change, incompatible with the purpose of this Lease, in the nature of the intention to provide a Play Space as agreed upon in the Amended Agreement between the City and BV.

In the event of default as defined in this Paragraph, title to any facilities or improvements in the leased property shall revert automatically to the City, and the Lessee shall surrender such improvements in accordance with the Amended Agreement between the City and BV and execute all documents deemed necessary by the City to convey, by Gift Deed as described in the Amended Agreement, title to that portion of the Project completed by Lessee.

29. [Intentionally Omitted.]

30. **Surrender**: Upon termination of the Lease, the Lessee shall quit and surrender to the City the Leased Property and the Project by Gift Deed as provided in the Amended Agreement.

32. **Failure to Construct Facility or Abandonment of Use**: These requirements are as provided in the Amended Agreement.

33. **Right of Entry**: At any time during the Term of the Lease, the City shall have the right, upon prior notice to the Lessee (except in the event of an emergency), to enter the Leased Property at all reasonable times for the purposes of inspecting the Leased Property and the Facilities to ensure compliance with the terms of this Lease. Notwithstanding the City's right to inspect the Leased Property, the City shall have no obligation to inspect the same. The City's failure to detect any violation or to notify the Lessee of any violation shall not relieve the Lessee of obligations under the terms of this Lease.

**PHASE ONE LEASE AGREEMENT BY AND BETWEEN THE CITY OF  
CHARLOTTESVILLE AND BENNETT'S VILLAGE, INC.**

34. **Waiver:** Except as provided in the Amended Agreement, no failure on the part of the City to enforce any of the terms or conditions set forth in this Lease shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver by the City of any default or failure to perform by Lessee shall be construed as or deemed to be a waiver of any other and/or subsequent default or failure to perform. Except as otherwise provided in this Lease or the Amended Agreement, the acceptance or payment of any rentals, fees and/or charges and/or the performance of all or any part of this Lease, for or during any period(s) following a default or failure to perform by the Lessee, shall not be construed as or deemed to be a waiver by the City of any rights hereunder.

35. **Identity of Interest:** The execution of this Lease or the performance of any act or acts pursuant to the provisions hereof shall not be deemed to have the effect of creating between the Lessee and the City any relationship of principal and agent, partnership or relationship other than that of lessee and lessor.

36. **Notice:** Notice shall be provided consistent with the notice requirements under the Amended Agreement.

37. **Modification or Amendment:** Any other modification or amendment of the Lease (other than for an extension or enlargement of the time or territory of the Phase Lease, shall be binding only if approved by the Lessee and the City and evidenced in a writing signed by each.

38. **Time of Essence:** Unless specifically provided herein or in the Amended Agreement to the contrary, in all instances where a party is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood and stipulated that time is of the essence.

39. **Cooperation:** The City and the Lessee agree to provide any further documentation or cooperate in any way necessary to carry out the basic intent of this Lease consistent with the Amended Agreement.

40. **Persons Bound:** The covenants, agreements, terms, provisions and conditions of this Lease shall bind and inure to the benefit the respective parties hereto and to their representatives, successors and (where permitted by this Lease) their assigns.

**PHASE ONE LEASE AGREEMENT BY AND BETWEEN THE CITY OF  
CHARLOTTESVILLE AND BENNETT’S VILLAGE, INC.**

41. **Entire Agreement:** This Lease, together with the exhibits, if any, attached, and the Amended Agreement contains the entire agreement between the City and the Lessee.

42. **Recording:** Any party shall have the right, at its sole cost and expense, to prepare and record a Memorandum of Lease or short form of the lease in recordable form but excluding detailed provisions of this Lease.

43. **Headings:** The section headings are for convenience only and shall not be used to explain, modify, simplify, limit, define or aid in determining the meaning or content.

44. **Interpretation:** In the event of any conflict, discrepancy or inconsistency between this document and any other documents which have been incorporated into this document by reference or made exhibits or attachments hereto, then the provisions set forth within the body of this document shall govern the parties' intent.

45. **Severability:** If any term, provision or condition of this Lease, or the application thereof to any person or circumstances, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, and the application of any term, provision or condition contained herein to any person or circumstances other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

46. **Governing Law:** This Lease shall be governed, construed and enforced by and in accordance with the laws of the Commonwealth of Virginia. Any suit or controversy arising under this Lease shall be litigated in the General District or Circuit Court of the City of Charlottesville, Virginia.

We agree to be bound by this Lease and its terms and conditions.

BV:

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

Title: \_\_\_\_\_



**PHASE ONE LEASE AGREEMENT BY AND BETWEEN THE CITY OF  
CHARLOTTESVILLE AND BENNETT'S VILLAGE, INC.**

CITY

By: \_\_\_\_\_  
Title: City Manager

Approved As to Form: \_\_\_\_\_  
City Attorney or designee

Funds Are Available: \_\_\_\_\_  
Director of Finance or designee

EXHIBT A

**RESOLUTION  
CALLING FOR AN IMMEDIATE CEASEFIRE AND  
AN END TO VIOLENCE IN ISRAEL AND PALESTINE**

WHEREAS the people of Charlottesville recognize that all human life is precious, and that the targeting of any civilian under any circumstance is a violation of international human-rights law; and

WHEREAS Gaza and Israel have already experienced tremendous loss of life, displacement, and violence, and hundreds of thousands of lives are at imminent risk; and

WHEREAS the City of Charlottesville has a longstanding tradition of being a welcoming city for refugees and understanding the challenges faced by those displaced by conflict; and

WHEREAS the United States Federal Government holds immense diplomatic and appropriations powers to save Palestinian and Israeli lives; and

WHEREAS to date, over 100 U.S. cities, including Atlanta, Chicago, Detroit, Durham, Harrisonburg, San Francisco, and Seattle, have adopted resolutions urgently calling for a ceasefire in Israel and Palestine; and

WHEREAS the billions spent in United States funding for this conflict could be allocated toward mitigating crises in our own community, including the funding of deeply affordable housing, public health, job training, and education;

NOW, THEREFORE, BE IT RESOLVED that the City of Charlottesville urges the Biden administration and all elected officials in the United States Senate and House of Representatives who represent this community to call for and make all efforts to facilitate:

1. an immediate, sustained, and comprehensive ceasefire in Israel and Palestine;
2. the immediate and safe release of all hostages; and
3. the immediate entry and provision of humanitarian aid needed for the people of Gaza, at the scale required to save the maximum number of lives.

BE IT FURTHER RESOLVED that the City of Charlottesville values the harmony that exists in our diverse community, and advocates for the dignity and safety of all residents, regardless of religion, race, or nation of origin; and,

BE IT FURTHER RESOLVED that the Charlottesville City Council asks the City Clerk that copies of this Resolution be quickly forwarded to the President of the United States, Joe Biden; Senators Tim Kaine and Mark Warner; and Representative Bob Good.

**AN ORDINANCE  
AMENDING AND REENACTING CITY CODE CHAPTER 19, ARTICLE III  
TO ALLOW EMPLOYEES WHO PARTICIPATE IN THE OPTIONAL DEFINED  
CONTRIBUTION PLAN TO SERVE ON THE RETIREMENT PLAN COMMISSION**

**WHEREAS**, the Retirement Plan Commission was established pursuant to City Code section 19-57 to administer the then-existing retirement plan of the City, the “Supplemental Retirement or Pension Plan” (the Defined Benefit Plan);

**WHEREAS**, subsequently, the City introduced additional retirement plan options, including the Defined Contribution Plan and the Deferred Compensation Plan;

**WHEREAS**, the Retirement Plan Commission oversees all City-sponsored retirement plans, including the Defined Benefit Plan, the Defined Contribution Plan, and the Deferred Compensation Plan;

**WHEREAS**, current City Code language permits only Defined Benefit Plan participants to serve on the Retirement Plan Commission as at-large members; and

**WHEREAS**, the City Code should be updated to permit a participant of any of the City-sponsored retirement plans to serve on the Retirement Plan Commission;

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia that City Code Chapter 19, Article III, of the City of Charlottesville, be and hereby is reenacted and amended as follows:

**Sec. 19-56. Definition.**

As used in this article, the term “commission” means the retirement plan commission created by section 19-57.

**Sec. 19-57. Created; purpose; composition.**

(a) There is hereby created a commission, to be known as the retirement plan commission, whose duty it shall be to administer all city-sponsored retirement plans, including the supplemental retirement or pension plan, the defined contribution plan, and the deferred compensation plan, in accordance with the provisions of this article and of article IV of this chapter.

(b) The commission shall be comprised of a member of city council, the city manager, the director of finance, the director of human resources, the city treasurer, three (3) employees of the city, including employees of any city agency participating in a city-sponsored retirement plan, one (1) retiree participating in a city-sponsored plan, and two (2) members of the community.

**Sec. 19-58. Terms of ex officio members.**

The terms of the ex officio members of the commission shall be concurrent with their service in such offices.

**Sec. 19-59. Appointment and terms; filling of vacancies.**

(a) The three (3) employee at-large members of the commission shall be appointed by the city council from a list of eligible candidates certified to the council by the city manager. They shall be appointed for terms of two (2) years, and shall be eligible to serve up to four (4) consecutive terms; provided, that each of the employee at-large members shall serve no more than four (4) full terms. Of the three (3) members initially so appointed, one (1) shall be appointed for a one-year term, and one (1) shall be appointed for a two-year term; and provided, that those employees initially appointed for terms of less than two (2) years and those appointed to fill unexpired terms shall be eligible for reappointment to four (4) full two-year terms.

(b) Whenever a vacancy exists in any of the three (3) employee at-large positions on the commission, the city manager shall certify such fact to the city council along with a list of candidates, which shall include any otherwise eligible city employee whose name has been placed in nomination by petition signed by at least fifteen (15) other city employees. In the event that an insufficient number of petitions are thus presented, the city manager shall nominate an additional employee or employees, to the end that such list shall include at least two (2) nominees for every vacancy to be filled by the city council; provided, that at least thirty (30) days prior to certifying such list to city council, the city manager shall cause to be posted, in city hall and at other principal locations where city employees work, a notice reciting the fact that such vacancy exists or will exist on the commission, the procedure hereinabove set forth for nominations and the date on which such list of nominees will be forwarded to the city council.

(c) No two (2) of the three (3) at-large employee members of the commission shall be employed in the same department of city government or by the same city agency.

(d) Each of the two (2) community members shall be appointed by the city council for a term of two (2) years, except that appointments to fill vacancies shall be for the unexpired remainder of the vacant term. No community member shall serve for more than four (4) consecutive two-year terms except that a member appointed to fill an unexpired term shall be eligible for reappointment to four (4) complete two-year terms.

(e) At least one (1) of the members appointed from the community shall be, at the time of the appointment, a resident of the city or the owner of a business located in the city. One (1) of the members appointed from the community shall have professional experience in money management, investment services, banking, or retirement plan administration.

(f) The one (1) retiree member of the commission shall be appointed by the city council from the list of applicants who are current retirees participating in a city-sponsored retirement plan, as certified to the council by the city manager.

The appointment shall be for a term of two (2) years and the member shall be eligible to serve four (4) full two-year terms.

**Sec. 19-60. President and secretary designated; keeping of journal; preserving of books and papers.**

The council member shall be the president and the director of human resources the secretary of the commission. The secretary shall keep a correct journal of the proceedings of every meeting and shall preserve all books and papers of the commission in their office.

**Sec. 19-61. City treasurer to keep account and be custodian of funds.**

The city treasurer shall keep an account of and shall be the custodian of all money, securities, bonds and other evidences of debt belonging to the retirement fund, subject to such conditions as the commission may prescribe.

**Sec. 19-62. Authority to employ actuary and incur expenses.**

To assist it in the discharge of its responsibilities under the provisions of this article and article IV of this chapter, the commission may employ an actuary as its technical advisor and incur such other expenses as it deems necessary for the efficient administration of its responsibilities.

**Sec. 19-63. Retirement fund generally.**

All of the funds and assets of the city's supplemental retirement or pension plan shall be maintained by the commission in a fund to be known as the retirement fund. In the retirement fund shall be accumulated all contributions made by the city pursuant to the provisions of section 19-92 and all income from the invested assets of the retirement fund. From the retirement fund shall be paid the retirement allowances and other benefits provided for under the terms of the retirement plan as set forth in article IV of this chapter and reasonable expenses therefore. The fund and the retirement plan shall be maintained for the exclusive benefit of eligible employees, retirees, or their beneficiaries.

**Sec. 19-64. Investment and management of retirement fund assets.**

The commission shall have charge of the investment and management of all assets of the retirement fund, subject to the standards for the investment of funds by fiduciaries as set forth in Code of Virginia, chapter 8 of title 51.1 (section 51.1-803), and subject to the restrictions of any investment policy adopted by formal resolution of the city council. All interest, dividends or other income accruing from such investments shall be collected by the city treasurer when due and deposited to the credit of the retirement fund. All such funds shall be reinvested according to the provisions of this section; provided, that unless some other provision is made by city council for such payment, sufficient funds shall be retained as cash in the fund to provide for current retirement payments under the retirement plan and other legitimate expenses of the fund.

**Sec. 19-65. Annual report to council.**

The commission shall, through the city treasurer, not later than November thirtieth of each year, make an annual report to city council on the condition of the supplemental retirement or pension plan and the defined contribution plan as of the preceding June thirtieth. Each such report shall include the results of an actuarial valuation of the assets and liabilities of the retirement plans, made not less frequently than biennially, and a statement of the amounts to be contributed by the city pursuant to section 19-92. The report shall also state the cash receipts of the retirement fund for the previous year in detail, an itemized list of securities bought or sold with the price paid or received and a detailed list of all assets of the fund. The report may also contain any recommendations the commission desires to make concerning changes in this Code with respect to the retirement fund or the retirement plans.

**Sec. 19-66. Disbursements.**

All disbursements by the commission shall be by warrant of the director of finance drawn on the city treasurer.

**Sec. 19-67. Quorum.**

The commission must have a quorum present to take action. A majority of the members serving on the commission shall constitute a quorum.

**Secs. 19-68—19-90. Reserved.**