

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



Agenda Date:	<i>June 2, 2014</i>
Action Required:	<i>Approval of McGuffey Art Center Lease</i>
Presenter:	<i>Lance Stewart, Facilities Maintenance Manager</i>
Staff Contacts:	<i>Lance Stewart, Facilities Maintenance Manager</i>
Title:	<i>McGuffey Art Center Lease</i>

Background:

The City of Charlottesville and McGuffey Arts Association formed a dynamic relationship in 1975, whereby this co-operative non-stock, taxable corporation leases from the City the former McGuffey Elementary School. In return for the use of the building as studio space for the Association's nearly 150 visual and performing artist members, the Association provides community outreach services, educational programs, and hosts a variety of events benefiting the local arts and cultural scene. This organization and the services it provides have proven to be of great benefit to the thriving Downtown business corridor and local art scene.

Discussion:

The City and the McGuffey Arts Association board of directors have for several years been in discussions regarding the future of our business relationship and the Association's role in the community. While that relationship has remained fundamentally static for 39 years, the Association's mission has matured. The continuing utilization of the McGuffey Art Center property by the McGuffey Arts Association is assumed, however both parties wish to fully explore any alternatives that might assure the enduring stability of this community resource. The Association's 2013 Annual Report highlights their efforts in the past year to define their vision and to consider alternative corporate structures that may empower the Association to realize that vision. These efforts have included outreach to other local arts groups, as well as extensive internal dialog.

The proposed lease is consistent with the spirit of past agreements in terms of the fiscal and legal relationship between our organizations, while establishing an initial two-year lease period, intended to ensure that the parties continue to cooperatively strive toward our shared goal of nurturing a vibrant and lasting community art center. It is expected that within this two-year timeframe we will arrive at a mutually held set of goals, and that the Association will make significant progress toward the potential organizational restructuring that will position it to serve the area's artists and our citizens for many years to come.

Alignment with City Council's Vision and Priority Areas:

A Center for Lifelong Learning – The McGuffey Arts Association 2013 Annual Report details the many efforts of the organization to provide and facilitate arts educational programs for citizens of all ages.

C'ville Arts and Culture – In addition of the direct artistic contribution of its members, the McGuffey Art Center hosts exhibitions of the art of non-member and community programs.

Budgetary Impact:

The proposed lease would continue the historically neutral budgeting approach for the upcoming year. The approved 2014-2015 fiscal year operating budget assumed that maintenance/operations costs would be offset by rent consistent with that received in FY 2013-14.

Recommendation:

Approval of lease.

Alternatives:

Allow current lease to expire.

Attachments:

Lease – McGuffey Art Center (2014)
McGuffey Arts Association 2013 Annual Report

RESOLUTION

BE IT RESOLVED by the Council for the City of Charlottesville, Virginia, that the City Manager is hereby authorized to sign the following document, in form approved by the City Attorney or his designee.

Lease Agreement between the City of Charlottesville (Lessor) and The McGuffey Arts Association, Inc. (Lessee) to lease the property at 201 2nd Street, N.W.

THIS LEASE AGREEMENT is made as of this 6th day of May, 2014, by and between the **CITY OF CHARLOTTESVILLE** (hereinafter, "Landlord" or "City"), whose address is P. O. Box 911, Charlottesville, Virginia 22902, and the **McGUFFEY ARTS ASSOCIATION, INC., a Virginia non-profit, non-stock corporation** (hereinafter, "Tenant").

1. DEMISED PREMISES; LEASE TERM.

- A. In consideration of the promises and covenants herein, Landlord hereby leases to Tenant that property located in the City of Charlottesville, Virginia and known as 201 2nd Street N.W. (hereinafter, the "Premises").
 - B. The Term of this Lease shall commence at 12:01 AM on July 1, 2014 ("Commencement Date") and shall end, if not sooner terminated, two (2) years thereafter, expiring automatically at midnight on June 30, 2016 ("Expiration"). The Landlord may, in its sole discretion, offer Tenant up to two (2) renewal options, each for a period of one (1) year.
2. **RENT.** During the lease term, Tenant agrees to pay to the Landlord rent in the annual amount of Twenty-Four Thousand Five Hundred and Sixty-Four Dollars (\$24,564) ("Rent"). The Tenant shall pay the Landlord the Rent, in advance, in twelve (12) equal monthly installments payable on the fifteenth day of each calendar month for the duration of the term of this lease. The Landlord may increase the amount of Rent, effective beginning July 1st of any year subsequent to the Commencement Date, provided the Landlord notifies the Tenant, on or before February 15th preceding the proposed July 1st effective date, of the amount of such increase and offers the Tenant the option to terminate its lease or begin paying such increased rent as of the July 1st effective date. The rent increase in any given year shall not exceed three percent (3%) of the current rent.

This provision shall continue in effect throughout any renewal terms of this lease.

3. SUBLET; USE OF PREMISES FOR PUBLIC PURPOSE.

- A. The Premises shall be used by the Tenant primarily as an art center, with spaces within the building subleased to individual artists and organizations promoting works of art. No such sublease shall extend beyond the term of this lease. The Tenant shall have no right to assign or sublet the Premises, with the exception of spaces to individual artists/organizations noted above, to any other party without prior written consent of the Landlord, which consent shall be entirely within the discretion of the Landlord.
 - B. Tenant may occasionally rent space on the Premises to private parties for special functions, with the proceeds from such rental kept by Tenant to sustain original purpose of Art Center and/or for leasehold improvements; provided, however, that the City shall be allowed to use space within the building and on the Premises for special functions at no cost, at times agreed to in advance by both parties.
4. **TENANT ALTERATIONS.** Any permanent alterations, additions and improvements to the Premises must be approved by Landlord prior to the commencement of construction. All such alterations, additions, and improvements to the Premises shall inure to the benefit of and shall be the property of the Landlord.
5. **LANDLORD INSPECTIONS; RIGHT OF ENTRY.** Landlord shall have the right to enter the Premises at reasonable times to make inspections of the condition of the Premises, repairs, alterations or improvements, and to show the Premises to prospective purchasers, tenants, workers and/or contractors. Except in emergencies or when circumstances otherwise render advance notice impractical the Landlord will give Tenant reasonable notice of Landlord's intent to exercise this right of entry.

6. LANDLORD'S COVENANTS.

A. Landlord covenants and agrees to:

1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;
2. Make, coordinate and pay for all routine repairs and maintenance of the exterior premises, including but not limited to, exterior painting and roof repairs.
3. Maintain in good and safe working order and condition all of the electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other utility or mechanical systems located within the Premises.
4. Maintain the grounds of the Premises, to include mowing, leaf removal, landscaping and tree maintenance.
5. Remove snow and ice from all walks and steps.

B. Landlord further covenants that the Tenant, on paying the rent and performing the covenants and conditions contained in this Lease, may peaceably and quietly have, hold and enjoy the leased Premises, subject to the other terms of this Lease.

7. TENANT'S COVENANTS.

Tenant covenants and agrees to:

A. Pay any and all utilities.

B. Keep and maintain the Premises in good, clean and safe condition, including:

1. Tenant shall comply with obligations imposed upon tenants by applicable building and housing codes materially affecting health and safety;
2. Tenant shall use all appliances, and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other systems, in a reasonable and safe manner;
3. Tenant agrees to pay all costs resulting from the intentional or negligent destruction, damage or removal of any part of the Premises by the Tenant or by any sublessee of the Tenant.

C. Tenant shall make an annual report to City Council about the progress of Tenant's various programs.

D. Tenant shall immediately notify the Landlord of any condition on the Premises that constitutes a fire hazard or other serious threat to the life, health or safety of the occupants of the Premises. Additionally, the Tenant shall provide prompt written notice to the Landlord of any defects or malfunctions in the Premises or in any of the equipment, appliances or parts thereof, as soon as the Tenant becomes aware of them.

E. Tenant covenants and agrees that upon the expiration or termination of this Lease: (i) the Tenant will deliver the Premises in the same condition in which they were received, ordinary wear and tear excepted; and (ii) the Premises shall be thoroughly cleaned. In the event any of the above conditions have not been met by Tenant prior to its vacation of the Premises, the Tenant agrees to pay all costs and expenses incurred by the Landlord to do so.

- F. Tenant agrees to release, indemnify, protect, and hold the City, its officers, agents and employees harmless from any loss, liability or obligation of any nature whatsoever, which may occur by reason of the Tenant's use of the Premises. This indemnification shall continue in full force and effect notwithstanding the termination of this Agreement. The Tenant shall maintain in force comprehensive public liability insurance coverage in a minimum amount of \$1,000,000, with an insurer authorized to do business in Virginia. Such policy shall name the City as an additional insured and shall provide that such coverage shall not be cancelled without thirty (30) days written notice to the City. The Tenant shall submit evidence of such insurance coverage to the City Attorney for approval prior to the commencement date of this lease.
- G. The Tenant shall not deliberately or negligently destroy, deface, damage, impair or remove any part of the Premises or permit any other person to do so. Tenant shall be liable for all costs and expenses necessary to repair or replace the Premises, or any portion thereof, as a result of such deliberate or negligent acts.
- H. Tenant shall not commit or permit any waste or nuisance on or about the Premises, nor do anything that might create a hazard of fire on or within the Premises.

8. DAMAGE TO PREMISES

- A. In the event the Premises are destroyed or substantially damaged by fire or other casualty, and thereby rendered unfit for occupancy, the Term of this lease shall, at the option of either party upon reasonable notice to the other, terminate as of the date of such damage. Under those circumstances, accrued rent shall be paid up to the time of such damage. If neither party desires to terminate the Lease, the Landlord shall enter and repair the Premises with reasonable speed and rent shall be waived during any period in which the Premises remain unfit for occupancy. Once the Premises have been restored to a condition which is suitable for occupancy, the Tenant's rental obligation shall recommence, but may be reduced by a reasonable amount for any period during which repairs continue, until such repairs have been completed.
- B. The Landlord shall maintain fire and extended coverage insurance on the Premises in an amount deemed adequate by the Director of Finance for the City of Charlottesville.
- C. The Tenant shall, at its own cost and expense, obtain adequate coverage for insuring the contents of the building against fire, theft or other peril, and the City expressly disclaims any liability for damages or loss of any nature whatsoever which may occur to the property of the Tenant, its members, sublessee or others while such property is located on the Premises.

9. HOURS OF OPERATION. Tenant shall establish regular hours during which the Premises will be open to the public. At a minimum, the Premises shall be open to the public six (6) days per week, forty-eight (48) weeks per year. For this purpose, a full day shall be deemed to be at least six (6) hours. Each studio shall be open a minimum of 17 ½ hours per week during public hours.

10. DEFAULT; TERMINATION.

- A. The following shall constitute events of Default by Tenant: (i) any material breach of this Lease by Tenant, including, without limitation, any breach that substantially affects the health or safety of any person; (ii) Tenant's abandonment of the Premises; (iii) Tenant's failure to make any payment of rent under this lease for a period of fifteen (15) days after written notice; (iv) use of the Premises by Tenant or others for any illegal purposes; (v) Tenant's denial of any right reserved in this Lease to the Landlord; (vi) filing by the Tenant or against the Tenant in any court pursuant to any statute of a petition of bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property or an assignment by the tenant for the benefit of creditors, provided that such proceedings are not dismissed within 90 days after the commencement of same; (vii) failure by the Tenant to maintain its status as a non-profit, non-stock organization, and (viii) the institution of legal proceedings by or against Tenant to levy upon or dispose of Tenant's leasehold interest in the Premises.

1. If Tenant is in default for non-payment of rent, and such default continues for thirty (30) days following written notice from the Landlord demanding possession of the Premises or the payment of rent, then the Tenant shall thereby forfeit its right to possession of the Premises. In such case, Tenant's possession may, at the Landlord's option, be deemed unlawful and the Landlord may proceed to recover possession through all lawful means and proceedings.
 2. In the event of a default for reasons other than failure to pay rent, the Landlord shall serve Tenant with a written notice stating the acts or omissions constituting the default and stating that the Lease will terminate, as set forth within the notice, upon a date not less than 30 days after Tenant receives the notice, unless the default is remedied within 21 days. If the breach is remediable by repairs or the payment of damages, and Tenant adequately remedies the breach within 21 days or such longer period of time as Landlord may specify in writing, the Lease shall not terminate. However, if a particular default is not remediable, Landlord's written notice to Tenant may state the acts and omissions constituting the default and state that the Lease will terminate upon a specific date, which date shall not be less than 30 days after Tenant receives the notice.
 3. In the event the Landlord pursues any remedies referenced above, the Tenant shall be liable as follows: (a) for all installments of rent and other charges that are past due, and those that are due and owing for the remainder of the Term of this Lease which shall immediately become due and payable; (b) for all expenses that may be incurred by the Landlord for re-letting the Premises, including, without limitation: brokerage, advertising, cleaning, repairing, redecorating and refurnishing expenses; (c) for any court costs incurred by the Landlord for possession of the Premises and for collection of unpaid rent or other charges under this Lease agreement; and (d) for reasonable attorney's fees incurred by the Landlord to obtain possession of the Premises or to collect rent, damages, or other charges under this Lease agreement.
- B. The following shall constitute events of Default by Landlord: (i) any material breach of this Lease by Landlord, including, without limitation, any breach that substantially affects the health or safety of any person; and (ii) Landlord's failure to comply with any laws pertaining to this Lease agreement.
1. In the event of a Default by Landlord the Tenant shall serve a written notice to the Landlord specifying the acts or omissions constituting the Default and stating that this Lease agreement will terminate on a specific date not less than 30 days after receipt of the notice if such breach is not remedied within 21 days. If the breach can be remedied by repairs, and the Landlord adequately remedies the breach prior to the date specified in the notice, this Lease agreement shall not terminate.
 2. The Tenant may not terminate this agreement for a condition caused by the deliberate or negligent act of the Tenant, sublessees or invitees.
 3. The Tenant may recover damages and reasonable attorney's fees and may obtain any other action or remedy permitted by law for Landlord's failure to abide by the provisions of this Lease agreement. The Tenant's recourse to any particular remedy shall not deprive him of any other action or remedy.
- C. Prior to Expiration, if the Tenant deserts the Premises, the Landlord may deem the Lease in default and the Premises to be abandoned. The Landlord shall post in a conspicuous area on the Premises a notice declaring the Premises abandoned. Thereafter, the Landlord may enter and secure Premises and, after compliance with any applicable provisions of state law, the Landlord shall be entitled to possession.
- D. Upon termination or expiration of this lease, Landlord shall have the right to reenter and repossess the Premises and may dispossess the Tenant and remove the Tenant and all other persons and property from the Premises. Tenant shall leave the Premises in good and clean condition, ordinary wear and tear excepted.

11. **NOTICES.** All notices required by this Lease, and all correspondence concerning this Lease, shall be sent by United States mail (postage prepaid), to the following individuals:

- A. To Landlord: to the attention of the City Manager for the City of Charlottesville, addressed as follows: P. O. Box 911, Charlottesville, Virginia 22902.
- B. To Tenant, to the address for the Premises, or such other address as the Tenant may designate in writing from time to time.

12. **HEADINGS.** The headings of the sections of this Lease are inserted for convenience only and do not alter or amend the provisions that follow such headings.

13. **GOVERNING LAW.** This Lease shall be construed, interpreted and applied in accordance with the laws of the Commonwealth of Virginia.

14. **SEVERABILITY.** Any provision of this Lease which is prohibited by, or declared by a court of competent jurisdiction to be unlawful or unenforceable under Virginia law shall be ineffective only to the extent of such prohibition or declaration; the remaining provisions of this Lease shall remain in full force and effect.

15. **NO WAIVERS.** Failure of the Landlord to insist, in any one or more instances, upon a strict performance of the covenants of this lease, or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment of such right, but the same shall continue and remain in full force and effect. No waiver by the landlord of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Landlord.

16. **AMENDMENTS.** This lease may not be amended or modified except by written agreement signed by both parties.

17. **BENEFITS.** This agreement is binding upon and shall inure to the benefit of all the respective parties hereto, their respective successors, legal representatives and assigns.

18. **ENTIRE AGREEMENT.** This lease shall constitute the full and complete agreement between the parties, and no other prior or contemporaneous writings or statements shall be of any consequence or have any legal effect.

WITNESS the following signatures and seals.

LANDLORD
CITY OF CHARLOTTESVILLE

TENANT
McGUFFEY ARTS ASSOCIATION

Maurice Jones, City Manager

Robert Anderson, President