



Waynesboro City Council Agenda Briefing

Meeting Date:	November 25, 2019	Staff/Council Member(s): City Manager
Agenda Item #	14	
Resolution#		
Department:	City Manager	
Subject:	Proposed Lease with Waynesboro Public Schools, Portion of 937 Fir Street	

Background: 937 Fir Street is a 9.7 acre lot owned by the City of Waynesboro. The administrative and engineering functions of the City are located at the address, as are a little league ballfield maintained by Parks and Recreation, a stormwater detention facility, a water tower, and the former Wayne Hills Elementary School from which Waynesboro Public Schools and the Shenandoah Valley Regional HeadStart operate pre-k programs. The HeadStart program has received a grant to replace the two modular classrooms. As a condition of the grant, a formal lease is required to secure use of the property for educational purposes. The City and the Schools do not presently have a lease agreement.

The new modular units will be an improvement to the HeadStart program and accordingly I recommend that we establish a lease and secure the grant funding. The lease reflects a 15-year term and minimum consideration.

City Manager’s Recommendation: Authorize the City Manager to execute the proposed lease.

Suggested Motion(s): Move to authorize the City Manager to execute a lease with the WPS.

Attachments:

Proposed Lease

**LEASE BETWEEN THE CITY OF WAYNESBORO AND
THE WAYNESBORO PUBLIC SCHOOLS**

THIS LEASE AGREEMENT is made this ___ day of _____, 2019, between the City of Waynesboro Virginia, a Virginia municipal corporation, "Landlord," whose address is 503 W. Main Street, Waynesboro, VA 22980, and the Waynesboro Public Schools, "Tenant", whose address is 301 Pine Avenue, Waynesboro, VA 22980.

1. **Agreement to Lease and Description of Property.** Landlord leases to Tenant and Tenant leases from Landlord that portion of the premises addressed as 937 Fir Street on which modular classrooms and the former Wayne Hills School are located and parking for same immediately adjacent to the school facilities (the "Leased Premises").

2. **Term.** The Term if this Lease shall be fifteen (15) years, commencing on _____, _____, and terminating on _____, _____.

3. **Rent.** The rental for the term is \$1.00 annually. The first year's rent shall be payable on the effective date of this Lease, and future years shall be payable on January 1st of each year thereafter.

4. **Utilities.** Tenant shall pay for reasonable use of electricity, natural gas, water and sewer. All other utilities shall be paid for by Tenant, which includes, but is not limited to, telephone, computer, internet, and rewiring.

5. **Quiet Enjoyment.** Landlord covenants that if Tenant pays the rent and performs the covenants that are contained in this lease, they shall have quiet and peaceful possession of the Leased Premises for the agreed term.

6. **Use of Premises.** The Leased Premises shall be used and occupied by Tenant exclusively as a public education facility. The Leased Premises shall be used at all times in conformity with all zoning ordinances. Tenant agrees to comply with all of the sanitary laws, ordinances, rules and orders of appropriate authorities affecting the cleanliness, occupancy, use, and preservation of the Leased Premises during the term of this Lease.

7. **Condition of Premises.** Tenant agrees that it has examined the Leased Premises, including the grounds and all buildings and improvements, and that they are, at the time of the Lease, in good order, repair and in a safe, clean and tenantable condition.

8. **Damage to Premises.** If the building comprising the Leased Premises, or any part thereof, shall be partially damaged by fire or other casualty, then Landlord or Tenant shall have the option to declare the Lease terminated by notifying the other in writing within thirty (30) days after the damage. If neither party elects to terminate, rent shall abate during the period of repair.

9. **Dangerous Materials.** Tenant shall not keep or have on the Leased Premises any articles or things of a dangerous and flammable or explosive character that might unreasonably increase the danger of fire on the Leased Premises or that might be considered hazardous or extra-hazardous by any responsible insurance company.

10. **Maintenance and Repair.** Tenant agrees to keep and maintain the Leased Premises in good, clean and sanitary condition during the term of the Lease. Tenant shall make all required repairs, including but not limited to, the building, grounds, paving, plumbing, heating apparatus, and electrical fixtures whenever damage shall have resulted from Tenant's misuse, waste, or neglect or that of Tenant's employees, agents, or visitors.

11. **Right of Inspection.** Landlord shall have the right at all reasonable times during the term of this Lease to enter the Leased Premises for the purpose of inspecting the Leased Premises and monitoring the thermostat. No notice is required in the case of emergencies or in the event that the giving of notice is impractical or impossible.

12. **Holdover by Tenant.** Should Tenant remain in possession of the Leased Premises with the consent of Landlord after the expiration of this lease, a new tenancy from month to month shall be created between Tenant and Landlord with a new rent equal to 110% of the stated rent which shall be subject to all the terms and conditions but shall be terminable on five (5) days' written notice mailed by either party to the other.

13. **Surrender of Premises.** At the expiration of the term of this Lease, Tenant agrees to surrender the premises broom clean, with all carpets professional shampooed and in as good a

state and condition as they were at the commencement of the Lease, reasonable use, wear and damages by the elements excepted. Tenant shall surrender to Landlord all keys.

14. **Default.**

A. If default is made in the payment of rent at the time specified and Tenant fails to pay the rent within ten (10) days after notice from Landlord, or any default is made by Tenant in the performance or compliance with any other term or condition of this agreement and Tenant fails to cure the default within ten (10) days after notice from Landlord, then this lease, at the option of Landlord, shall terminate and be forfeited, and Landlord may re-enter the premises and remove all persons from the premises..

B. In the event of termination, Tenant shall pay to Landlord the following amounts:

1) All past-due rent and other charges;

2) All rent that would have accrued during the term or until the premises are leased to a new tenant, provided that (a) Landlord shall minimize such damages by making reasonable efforts to enter into a new lease as soon as practical and (b) Landlord shall apply as a credit toward such rent, or any judgment secured by Landlord that arises from such rent, the amount of any prepaid rent for such months;

3) All expenses that Landlord may incur for cleaning, painting and repairing the premises due to Tenant damaging the Leased Premises during the term or Tenant's failure to leave the Leased Premises thoroughly clean and in good condition, reasonable wear and tear excepted or damaged at the end of the term; and

4) Any court costs incurred by Landlord.

C. In the event that Landlord accepts periodic rent payments with knowledge of a material non-compliance by Tenant, such acceptance shall constitute a waiver of Landlord's right to terminate this lease, unless Landlord accepts such rent with a reservation and sends a written notice to Tenant that the acceptance of the rent does not waive any default or other remedies that Landlord may have under this Lease.

D. Landlord shall be entitled to recover from Tenant all costs and expenses, including reasonable attorney's fees, incurred in enforcing the terms of this Lease.

15. **Abandonment.** If at any time during the term of this Lease, Tenant abandons the Leased Premises, then Landlord may, at its option, enter the Leased Premises by any means without being liable for any prosecution and without becoming liable for damages or for payment of any amount and may, at their discretion, relet the Leased Premises for the whole or any part of the unexpired term and receive and collect all rent payable by virtue of such reletting and again, at Landlord's option, hold Tenant liable for any difference between the rent that would have been payable under this Lease during the balance of the unexpired term if the lease had continued in force. If Landlord's right of reentry is exercised following abandonment of the premises by Tenant, then Landlord may consider any personal property belonging to Tenant and left on the premises to have likewise been abandoned, in which case Landlord may dispose of such personal property in any manner it deems proper, and it is relieved of all liability for doing so.

If the Tenant will be absent from the Leased Premises for more than 30 consecutive days, Tenant shall give prior written notice of such absence to Landlord. If Tenant fails to give such notice and only if rent is past due for more than thirty (30) days, Landlord may deem the Lease in default and premises to be abandoned and may re-enter and secure the premises.

16. **Binding Effect.** Covenants of this agreement shall apply to and bind the heirs, legal representatives and assigns of the parties, and all covenants are to be construed as conditions of Lease.

17. **Non-Waiver.** Landlord's or Tenant's failure to insist upon strict performance of any covenant of this Lease shall not be a waiver or relinquishment for the future of such covenant, right, or option, but the same shall remain in full force and effect.

18. **Waiver of Right to Jury Trial.** Both Landlord and Tenant hereby waive the right to trial by jury in any action, proceeding, or counterclaim brought by either party against the other arising out of this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the premises, and/or any injury or damage on or about the Leased Premises.

19. **Insurance.** Tenant shall, during the entire term of this Lease and any renewal throughout keep in full force and effect a policy of public liability and property damage insurance with minimum limits of \$1,000,000 with respect to the Leased Premises and the business operated by Tenant. Landlord shall be named as an additional insured on the insurance

policy which shall provide that it will not be cancelled without at least thirty (30) days prior notice to Landlord.

20. **Jurisdiction and Law.** This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia notwithstanding any conflicts-of-law provisions thereof to the contrary. Any dispute concerning the performance or interpretation of this Lease shall be decided in the General District or Circuit Court of the City of Waynesboro, Virginia.

21. **Notices.** All notices or demands required or permitted to be given or served pursuant to this Lease shall be deemed to have been given or served only if in writing forwarded by (a) hand delivery, (b) certified mail, postage prepaid, or (c) overnight courier, and addressed to the parties at the address listed above.

WITNESS the following signatures.

The City of Waynesboro, Virginia

_____(SEAL)
By: Michael G. Hamp, II, City Manager

and

Waynesboro Public Schools

_____(SEAL)
By: Jeffrey D. Cassell, Division Superintendent