

**SHENANDOAH VALLEY JUVENILE DETENTION CENTER
LEASE AGREEMENT WITH
CITY OF WAYNESBORO, VIRGINIA**

THIS LEASE AGREEMENT FOR MEMBER JURISDICTIONS (this "Lease") is made by and between the Shenandoah Valley Juvenile Detention Center Commission, as landlord (the "Commission"), and City of Waynesboro, Virginia ("Tenant"), a political subdivision of the Commonwealth of Virginia. Tenant, together with the other jurisdictions that are members of the Commission, from time to time and pursuant to the Commission's Bylaws, are herein called individually, a "Member Jurisdiction" and collectively, the "Member Jurisdictions".

RECITALS

A. The Commission is a public body corporate duly formed under the provisions of Article 13, Chapter 11, Title 16.1 of the Code of Virginia (the "Act"), and operates a juvenile detention center located in Augusta County, Virginia (the "Center").

B. Tenant is a member of the Commission pursuant to the Act and the Commission's Bylaws.

C. Tenant neither owns nor operates a facility to house juvenile detainees, and uses the Center to house eligible juveniles.

D. The Commission and Tenant desire to enter into this Lease to set forth the terms and conditions governing the lease of bed space in the Center to the Member Jurisdictions. Except as expressly stated herein, this Lease is not intended to and does not create any right to use of space.

NOW, THEREFORE, the Commission and Tenant agree as follows:

1. Lease of Center Bed Space. Subject to the terms and conditions set forth in this Lease, the Commission leases to Tenant, and Tenant leases from the Commission, the bed space within the Center that is available from time to time for the purpose of housing eligible juveniles of Tenant, together with a nonexclusive license to use for their intended purposes those portions of the Center designated by the Commission as common areas for ingress, egress and related purposes. The Commission agrees to provide bed space to all of Tenant's juveniles who are eligible for detention at the Center during the Term (as defined in paragraph 2(a) below), so long as the Center is not then at capacity, as determined from time to time by the Executive Director appointed by the Commission to oversee operation of the Center (the "Executive Director"), in his sole discretion. Tenant acknowledges and agrees that bed space will be allocated by the Commission on a first-come, first-served basis, and that the Commission has the right to lease bed space to others on such terms as the Commission approves, so long as no other tenant is afforded priority over Tenant on any basis other than first-come, first-served.

2. Term; Non-appropriation.

a. Term. Subject to the non-appropriation limitations set forth in paragraphs 2(b) through 2(e) below, the term of this Lease (together with any applicable renewals, the "Term") commences on July 1, 2022 and ends on June 30, 2032, unless earlier terminated by its terms or by

law. This Lease shall automatically renew for two additional five-year periods unless notice of intent not to renew is provided by either party at least 180 days in advance of the expiration of the then-current Term. Notwithstanding anything to the contrary in this Lease, if the Tenant ceases to be a member of the Commission pursuant to the Commission's Bylaws, then this Lease shall automatically terminate with the termination of the Tenant's membership.

b. Non-appropriation. While recognizing that the Tenant is not empowered to make any binding commitment beyond its current fiscal year, it is the current intention of Tenant to make sufficient annual appropriations during the Term to pay all Rent (as defined in paragraph 3(b) below) and other amounts required to be paid by Tenant pursuant to this Lease. Notwithstanding anything in this Lease to the contrary, Tenant's obligation to pay Rent and other amounts, and the cost and expense of performing Tenant's other obligations under this Lease, are subject to and dependent upon appropriations being made from time to time by Tenant's governing body. Tenant directs its chief executive officer or other officer charged with the responsibility of preparing its budget to include in the budget for each fiscal year during the Term, a timely request that Tenant's governing body appropriate sufficient amounts to pay and perform its obligations pursuant to this Lease for such fiscal year. If at any time during any fiscal year the amount appropriated in the Tenant's budget for that fiscal year is insufficient to pay the Rent and other amounts when due under this Lease, Tenant directs its chief executive officer or other officer charged with the responsibility of preparing its budget to submit to its governing body at the next scheduled meeting, or as promptly as practicable but in any event within 45 days, a request for a supplemental appropriation sufficient to cover the deficit.

c. Notice as to Appropriation. Tenant agrees to provide notice to the Commission by June 30 of each year of the amount budgeted and appropriated by Tenant for all payments required to be made pursuant to this Lease in the fiscal year commencing on the immediately succeeding July 1. If no amounts are budgeted or appropriated by Tenant in connection with this Lease for a given fiscal year of Tenant by thirty (30) calendar days after the beginning of such fiscal year, or for any other reason Tenant is unable to obtain sufficient funds to pay the Rent and other amounts due pursuant to this Lease for such fiscal year, then Tenant shall give to the Commission immediate written notice of such failure or inability, and either Tenant or the Commission may elect to terminate this Lease. Any such termination of this Lease, at the option of the Commission, may also constitute termination of Tenant's membership in the Commission.

d. Essential Nature; Limitation. To the extent allowable by law, Tenant (i) declares that this Lease of bed space in the Center is essential to the efficient operation of Tenant, and anticipates that its need for such bed space will continue throughout the Term; and (ii) acknowledges and agrees that the non-appropriation provisions of this Lease are not intended to be used as a substitute for convenience termination nor for the purpose of permitting Tenant to transfer its juvenile detainees to another Center prior to the expiration of the Term of this Lease.

e. Effect of Non-appropriation or Failure to Give Notice of Appropriation. If Tenant fails to provide timely notice of appropriation as required above, or if the Commission requests but fails to receive evidence of sufficient appropriation to permit performance of Tenant's obligations for the then-current fiscal year, or the Tenant notifies the Commission that it lacks the financial resources to perform its obligations for the then-current fiscal year, then: (i) Tenant shall not be entitled to vote or participate in matters coming before the Commission unless and until such failure or deficiency is cured to the Commission's satisfaction; (ii) the Commission may, in addition to its other rights and remedies, refuse to accept any additional juvenile detainees from Tenant and request the

removal from the Center of any juvenile detainees of Tenant then being held; and (iii) the Commission may immediately terminate this Lease as provided in paragraph 2(c) above.

3. Rent. Subject to the non-appropriation limitations and other provisions set forth in Section 2 above, Tenant shall pay to the Commission the Rent, as such term is defined and specified in this Section 3 below.

a. Base Rent. Tenant shall pay to the Commission the following:

(i) Amount and Payment. Tenant shall pay to the Commission for each fiscal year during the Term, an amount equal to Tenant's Proportionate Share (as defined in subparagraph (ii) below) of the Operating Costs of the Center (as defined below) (the "Base Rent"). Base Rent shall be due and payable to the Commission in quarterly installments due on July 1, October 1, January 1 and April 1 of each year during the Term. As used in this Lease, the term "Operating Costs" means, as to each fiscal year: (i) all costs and expenses reasonably determined by the Commission to be attributable, directly or indirectly, to the ownership, operation, management, maintenance, repair, design, construction, renovation or demolition of the Center for such fiscal year, including without limitation, the cost of annual audits contemplated by subparagraph 3(b)(vii) below, amortized debt service costs, capital costs, payments to any reserve fund established by the Commission (whether an operating reserve, debt service reserve, or otherwise), and all costs and expenses arising out of or required to comply with requirements of any financing obtained by the Commission in relation to the Center, less (ii) all reimbursements, grants, subsidies, or other similar monies received by the Commission from the Department of Juvenile Justice or other governmental or non-governmental sources for such fiscal year.

(ii) Tenant's Proportionate Share. Tenant's Proportionate Share of Operating Expenses shall be determined based upon the number of Daily Bed Spaces (as defined below) in the Center that were actually used by Tenant in relation to all other Member Jurisdictions during the immediately preceding three calendar years, as follows:

$$\begin{array}{l} \text{Proportionate Share of Tenant} = \\ \text{Percentage of Daily Bed Spaces Actually} \\ \text{Used During Preceding Three Calendar} \\ \text{Years by Tenant} \\ \\ \text{Multiplied by} \\ \\ \text{Operating Costs for Ensuing Fiscal Year} \end{array}$$

The Percentage of Daily Bed Spaces Actually Used by a Member Jurisdiction during the preceding three calendar years shall be determined by dividing the Daily Bed Spaces actually used by such Member Jurisdiction during the preceding three calendar years by the Daily Bed Spaces actually used by all Member Jurisdictions during such calendar years. "Daily Bed Space" is equal to one (1) for each day that each bed space in the Center is occupied. By way of example, if two (2) detainees are held at the Center for thirty (30) days each and one detainee is held at the Center for twenty (20) days, the total Daily Bed Space attributable to the Member Jurisdiction responsible for such detainees is eighty (80). If a Member Jurisdiction ceases to be a member of the Commission, for any reason, at any time during a fiscal year of the Commission, then the proportionate share allocated to such former member shall be allocated, pro rata, to the remaining Member Jurisdictions.

(iii) Sample Annual Rent Allocation. For purposes of example only, assume that: (A) the budgeted Operating Costs for the fiscal year 2022-2023 (July 1, 2022 through June 30, 2023) equal \$2,000,000, (B) the number of Daily Bed Spaces used by Member Jurisdiction X for the preceding three calendar years ended December 31, 2021, is 1500, and (C) the number of Daily Bed Spaces used by all Member Jurisdictions those three calendar years is 15,000. Based upon those assumptions, the Proportionate Share of Member Jurisdiction X for fiscal year 2022-2023 would be determined as follows:

Percentage of Daily Bed Spaces Actually Used by Member Jurisdiction X during preceding three calendar years = 1500 divided by 15,000 = 0.1 (or 10%)

Estimated Annual Rent Allocation for Member Jurisdiction X = 0.1 multiplied by \$2,000,000 = \$200,000

Based on this example, each quarterly payment due from Member Jurisdiction X for fiscal year 2022-2023 would equal \$50,000. The actual Base Rent payable by Member Jurisdiction X would remain subject to any adjustment for Additional Rent based upon actual Operating Costs as provided in subparagraph (v) below.

(iv) Annual Determination of Base Rent. The Commission shall provide to Tenant, by January 1 of each year during the Term, notice of the Commission's estimate of the Base Rent to be payable by Tenant for the upcoming fiscal year, together with a statement showing calculation of Tenant's Base Rent and a copy of the annual budget for the upcoming fiscal year (July 1 to June 30) on which the Commission's determination of Base Rent is based.

(v) Annual Determination of Additional Rent, If Any. The Commission's budgetary estimates of Operating Costs shall not constitute any representation or assurance by the Commission of the actual amount of Operating Costs. If actual Operating Costs exceed budgeted Operating Costs at any time for any reason, the Commission may provide written notice to Tenant of such difference, and subject to the non-appropriation limitations and other provisions set forth in paragraphs 2(b) through 2(e) above, Tenant shall pay to the Commission, within thirty (30) days of such notice or such longer timeframe as the Commission may set forth in writing, an amount equal to Tenant's proportionate share of such difference (the "Additional Rent"). If actual Operating Costs are less than budgeted Operating Costs at any time for any reason, the Commission has no obligation to refund the difference to Tenant, but shall apply such funds to Operating Costs for the subsequent fiscal year or use the funds for such other purpose as may be approved by the Commission's governing body.

(vi) Annual Audit. The Commission agrees to have an annual audit conducted of the accounts relating to the Center by independent accountants selected by the Commission, and to make such audit available to Tenant for review. The expense of each annual audit shall be allocated as an Operating Cost.

(vii) Additional Rent Generally. The Commission shall have all rights against Tenant for default in payment of Additional Rent as in the case of default in payment of Base Rent.

b. Place and Manner of Payment. All Base Rent and Additional Rent (collectively,

"Rent") shall be paid without notice, demand, setoff or deduction, in lawful money of the United States of America, at the Commission's address or at such other place as the Commission may from time to time designate in writing.

c. Net Lease. This Lease shall be deemed and construed to be a net lease.

d. Not a Residential Lease. The Commission and Tenant acknowledge and agree that the Center is a juvenile detention facility and not a home or residence, and that this Lease is not subject to the Virginia Residential Landlord and Tenant Act.

4. Tenant's Covenants.

a. Tenant Commitment. To the extent allowable by law, Tenant agrees to commit to the Center all of the eligible juveniles within its jurisdiction. For purposes of this Lease, a juvenile shall be deemed to be the responsibility of the locality in which he or she is taken into custody or in which disposition is made, rather than the locality in which he or she may legally reside.

b. Removal of Juveniles from Center. If the Executive Director shall notify Tenant that removal of one or more of its juvenile detainees from the Center is necessary, for any reason, then Tenant shall remove such juvenile detainee(s) from the Center within twenty-four (24) hours of the time of notification.

c. Use. Tenant shall use and occupy the Center for detention of eligible juveniles in accordance with applicable law and for no other purpose.

d. Transportation. Tenant is responsible for transporting its eligible juveniles to the Center upon their initial admittance, to and from any court proceedings or hearings, or for whatever other reason, including without limitation, medical appointments, dental appointments, and psychological and/or psychiatric evaluations.

e. Additional Expenses. Subject to the non-appropriation limitations and other provisions of paragraphs 2(b) through 2(e) above, Tenant agrees to reimburse the Commission, upon demand, for any extraordinary or additional necessary expenses incurred by the Commission (including without limitation, employment of additional attendants) by reason of a juvenile placed in the Center by Tenant being intellectually disabled, epileptic, physically disabled or having physical or mental illness to an extent requiring hospitalization, treatment, or attention that the Executive Director, the medical staff, or the mental healthcare staff of the Center determines to be in such detainee's best interest.

f. Consideration of Commission Financing. Tenant agrees to consider proposals made by the Commission with respect to the Commission's attainment of financing from time to time in connection with any improvements or renovations to the Center including the maintenance, equipping and expansion thereof, as may be advisable from time to time.

5. Commission's Covenants.

a. Uniform Rules. The Commission agrees to apply uniform standards, rules, and policies with respect to similarly-situated juveniles housed pursuant to the leases with each Member

Jurisdiction.

b. Confidentiality. The Commission agrees to comply with applicable laws regarding the confidentiality of records, files, and identity with respect to juvenile detainees.

c. Operation of Center. The Commission agrees to operate the Center in compliance with all applicable local, state and federal laws.

d. Books and Records. The Commission shall maintain such records and provide such reports to Tenant as are required by the Act or contemplated by the Commission's Bylaws from time to time.

6. Default. If the Commission defaults under this Lease and such default is not cured within thirty (30) calendar days of written notice from Tenant, then Tenant may terminate this Lease by written notice to the Commission, so long as such default remains uncured, in addition to all other rights and remedies available to Tenant at law or in equity. If Tenant defaults under this Lease and such default is not cured within thirty (30) calendar days of written notice from the Commission, then the Commission may terminate this Lease by written notice to the Tenant, so long as such default remains uncured, in addition to all other rights and remedies available to the Commission at law or in equity.

7. Damage or Destruction. If the Center is damaged or destroyed by fire or other casualty during the Term, the Commission shall rebuild or restore the Center, or build another detention center, provided that funding is available for the Commission to fulfill such obligation. Notwithstanding the foregoing, the Commission shall have no obligation to rebuild the Center or build another center if the Commission is terminated in accordance with its Bylaws and provision is made to satisfy any then-outstanding debt of the Commission.

8. Assignment. Tenant acknowledges and agrees that the Commission has the right to assign, in whole or in part, its rights pursuant to this Lease (including, without limitation, its right to receive all Rent and any other payments) to any third party to facilitate the Commission's attainment of financing in connection with renovations, improvements, or additions to the Center or otherwise. Tenant may not sublet or assign all or any part of its rights pursuant to this Lease without the prior written consent of the Commission, which may be withheld in the Commission's sole and absolute discretion. Any purported sublet or assignment by Tenant without the Commission's consent shall be null and void, and shall confer no rights to any third party.

9. Severability of Invalid Provisions. If any clause, provision or section of this Lease is held to be illegal or invalid by any court of competent jurisdiction, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections of this Lease, and this Lease will be construed and enforced as if the illegal or invalid clause, provision or section was not contained in it.

10. Notices. Any notice or other communication in connection with this Lease shall be delivered in writing, and may be delivered via hand delivery, U.S. mail (postage prepaid) or facsimile, as follows:

If to the Commission: Shenandoah Valley Juvenile Detention Center Commission
Attention: Executive Director
300 Technology Drive
Staunton, VA 24401
Facsimile: 540-213-0255

If to Tenant: To the address set forth by its signature below.

Any notice shall be conclusively deemed to have been received and shall be effective as follows: (a) if hand delivered, on the date actually delivered, (b) if mailed, on the earlier of actual receipt or the fifth day (not counting Sundays or legal holidays observed by the U.S. Postal Service) after the day on which mailed, or (c) if sent by facsimile, on the first business day after the sender's receipt of electronic confirmation of transmittal to the correct facsimile number given above. Either party may change its address or facsimile number for notice purposes by giving notice hereunder.

11. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

12. Entire Agreement; Amendments. This Lease constitutes the entire agreement of the parties with regard to its subject matter, subject to the Commission's Bylaws, and may be amended only by written amendment executed by all parties and approved by a resolution adopted by the governing bodies of the Tenant and the Commission.

13. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of all of the parties, their respective successors and, subject to Section 8 above, their respective assigns.

14. Effective Date. This Lease shall only be effective upon approval by resolution of each of the governing bodies of Tenant and the Commission. Each party agrees to provide notice of such approval to the other on or before March 1, 2022.

15. Counterparts. This Lease may be executed in any number of counterparts, all of which together shall constitute one and the same original.

16. Recordation. Tenant agrees, upon request by the Commission, to execute and deliver a Memorandum of Lease for recordation in the Office of the Clerk of the Circuit Court of Augusta County, Virginia.

17. Lease Shall Not Constitute Debt. It is the intent of the parties hereunder that this Lease shall not constitute debt or a pledge of the faith and credit of the Commonwealth of Virginia or any political subdivision thereof, including the parties hereunder. **NEITHER THE COMMONWEALTH OF VIRGINIA NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE PARTIES UNDER THIS LEASE, SHALL BE OBLIGATED TO PAY RENT HEREUNDER OR OTHER COSTS OR CHARGES EXCEPT AS MONIES MAY BE LAWFULLY AVAILABLE AND APPROPRIATED THEREFOR FROM TIME TO TIME BY THE RESPECTIVE GOVERNING BODIES OF THE PARTIES IN EACH THEN CURRENT FISCAL YEAR DURING THE TERM HEREUNDER, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE PARTIES UNDER THIS**

LEASE, SHALL BE PLEDGED TO THE PAYMENT OF RENT OR OTHER COSTS OR CHARGES UNDER THIS LEASE.

**SHENANDOAH VALLEY JUVENILE
DETENTION CENTER COMMISSION**

By: _____
Timothy J. Showalter
Title: Executive Director
Shenandoah Valley Juvenile
Detention Center
Address: 300 Technology Drive
Staunton, Virginia 24401-3968
Phone No.: (540) 886-0729
Fax No.: (540) 886-0720
Email: TShowalter@svjc.org

**COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____**

The foregoing instrument was acknowledged before me this ___ day of _____, 2022, by Timothy Showalter, Executive Director of the Shenandoah Valley Juvenile Detention Center.

My Notary Registration No.: _____
My Commission Expires: _____

Notary

[Additional Signature Page Follows]

[Lease Agreement and Signature Page Precedes]

CITY OF WAYNESBORO, VIRGINIA

By: _____
Name: Michael G. Hamp, II
Title: City Manager
Address: Charles T. Yancey
Municipal Building
503 W. Main Street
Suite 210
Waynesboro, Virginia 22980
Phone No.: 540-942-6600
Fax No.: 540-942-6671

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Michael G. Hamp, II, City Manager, on behalf of the City of Waynesboro, Virginia.

My Notary Registration No.: _____
My Commission Expires: _____

Notary