



First
Presbyterian
Church
of Waynesboro, Virginia

The Columns *Online*

April 12, 2023 | Waynesboro, Virginia | *a newsletter supplement*



Congregational Meeting after worship this Sunday

**The Session will present the agreement between
FPC & The Fishburne Military School
for your Concurrence.**

See Below 

Memorandum of Understanding between First Presbyterian Church and the Fishburne Military School

First Presbyterian Church, Waynesboro, VA (FPC) and the Fishburne-Hudgins Educational Foundation, Inc., trading as Fishburne Military School (FMS), have enjoyed more than a century of common history, cooperation, and partnership in the community. At the time of this writing, FPC is in Pastoral transition, facing a crossroads in the life of the congregation, while FMS is looking to the future with the creation of a new Campus Master Plan. It is at this decisive moment in the lives of both institutions it is crucial to clarify their relationship, and seek ways to address the long terms needs of both church and school.

It is in the best interest of both parties that the congregation continue to gather for worship, fellowship, and service to the community, and that the church property maintains the character, history, and utility it has represented since 1911. Likewise, it is in the common interest for the school to consolidate oversight of the parcel of land upon which the institution has stood since 1916.

Toward that end, this Memorandum of Understanding establishes guidelines by which FMS would acquire the building and grounds, including parking and furniture, fixtures, and equipment, (hereinafter FF & E) currently occupied or used by First Presbyterian Church, Waynesboro, and the guidelines by which FPC would continue to use those facilities until such time as the congregation is dissolved or chooses to move. This Memorandum of Understanding, supersedes any previous agreements, and takes effect when ratified by all parties involved.

1. Basic Agreement.

A. First Presbyterian Church ("THE CHURCH") agrees to deed the following to the Fishburne-Hudgins Educational Foundation, Inc. (FMS): the real property located at 249 South Wayne Avenue, Waynesboro, VA 22980 ("THE PROPERTY"), which consists of: a structure consisting of two wings, hereafter referred to as the Sanctuary Wing and the Educational Wing; the furniture, fixtures, and equipment currently in use in the structure, with the exception of the pulpit, communion table, communion sets, paraments, bibles, hymnals and other worship accoutrements; and the parking lot located at the southwest corner of 11th Street and Chestnut Avenue.

B. The Church shall reserve in deed express rights to continue to use the property in accord with this MOU as outlined herein, which shall survive closing. FMS agrees that the Church shall have free use of the property for worship, fellowship, outreach, or any other activity related to its mission and ministry, for as long as the church remains an active congregation of the Presbyterian Church (U.S.A.) and continues to adhere to the terms defined herein. This free use includes scheduling priority for the sanctuary and the Sanctuary Wing.

C. FMS agrees that the First Presbyterian Church Preschool ("THE PRESCHOOL") can continue to operate under the control, direction, and responsibility of The Church on the first floor of the Education Wing.

D. The Church agrees that the FMS shall have scheduling priority for the remaining floors of the Educational Wing for activities related to its mission, subject to prior notice to The Church.

E. FMS agrees that the Church shall retain the right to offer the use of The Property to arts, civic or other organizations, subject to prior notice, for as long as The Church remains an active congregation of the Presbyterian Church (U.S.A.). The Church is solely and fully responsible for the control, oversight, any cost of any kind related to these activities and liability for any claim arising from these activities.

**Memorandum of Understanding between
First Presbyterian Church and the Fishburne Military School, cont.**

F. FMS agrees that the Waynesboro Symphony Orchestra can continue to use the property at the discretion of the First Presbyterian Church Session. The church will provide the annual agreement and Symphony calendar to FMS in a timely fashion.

G. The parties jointly agree that The Property, including the parking lot and all FF & E, shall be maintained in "first-class" condition for the life of this agreement, not less than five (5) years.

H. FMS agrees to assume responsibility for Major Structural Repairs to The Property. The definition of 'Major Structural Repairs' is covered elsewhere in this memorandum.

I. The Church agrees to continue to cover the Maintenance and Operating Costs of The Property. 'Maintenance and Operating Costs' are defined elsewhere in this memorandum.

J. After five years, if The Church has been dissolved, or ceases to function as a congregation of the PC(USA), FMS agrees to pay \$400,000 to the Presbytery of the Shenandoah ("THE PRESBYTERY"), or to agent(s) designated by the Presbytery.

K. If the Church continues to function as a congregation of the PC(USA) after five years, the remittance to the Presbytery shall decrease each year by \$40,000 until the fifteenth year, after which any obligation shall be discharged.

L. Upon mutual agreement of both parties, The Church and/or FMS may make changes or upgrades to the building to improve functionality, meet changing building codes, or other changes that improve the structure. Financial responsibility for such changes or upgrades shall be negotiated by the Session of the Church and representatives of FMS.

M. To the fullest extent allowed by law, The Church shall at all times during its usage indemnify, defend and hold FMS and each of their respective Trustees, Officers, Employees, Agents, Guests and Invitees from and against any and all claims, liabilities, and losses of any type including attorney fees and all FMS direct and indirect costs, caused in whole or in part by The Church's actual or alleged acts or omissions or the actual or alleged acts or omissions of those acting on behalf of The Church in connection with, the use and/or occupancy of The Property.

N. To the fullest extent allowed by law, FMS shall at all times during its oversight indemnify, defend and hold The Church and each of their respective Trustees, Officers, Employees, Agents, Guests and Invitees from and against any and all claims, liabilities, and losses of any type including attorney fees and all direct and indirect costs, caused in whole or in part by FMS's actual or alleged acts or omissions or the actual or alleged acts or omissions of those acting on behalf of FMS in connection with, the use and/or occupancy of The Property.

O. The Church shall maintain insurance coverage, listing FMS as a named insured, in amounts sufficient to cover property, liability, personal injury, and automotive risks incurred upon The Property while it is being used for worship, fellowship, outreach, or any other activity related to its mission and ministry.

**Memorandum of Understanding between
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P. FMS shall maintain insurance coverage sufficient to cover property, liability, personal injury, and automotive risks caused in whole or in part by FMS's use of The Property for its mission including, but not limited to: classes, labs or other educational gatherings; sporting events; social events or gatherings; school rituals and ceremonies; and any unauthorized use of The Property by faculty, staff or cadets, to include both indoor and outdoor spaces and the adjacent parking lot.

2. Assessment of Property Condition Prior to closing. FPC and FMS will have the building inspected by a third party to determine the condition of the Property and will agree on required maintenance and Major Structural Repairs as defined herein, and on the timetable for such maintenance and Major Structural Repairs.

3. Definitions.

A. *Major Structural Repair* – The overhaul or replacement of major constituent parts required to restore The Property to such a condition that it may be effectively utilized for its designated purpose. This includes ensuring the building envelope is structurally secure and major required life safety issues are up to date and in accord with local building code requirements, including asbestos remediation. (dollar amount)

B. *Maintenance*– The recurrent, day-to-day, periodic, or scheduled work required to maintain The Property in such a condition that it can be effectively used for its designed purpose without Major Structural Repair, and which does not change or alter the size, type, or extent of the existing facilities. This includes, but may not be limited to general cleaning, painting, and patching, broken glass replacement, landscaping, minor plumbing repairs, carpet and flooring replacement, appliance repair, replacement or purchase, pest control, organ maintenance and repair, audio/visual equipment repair, replacement or purchase, and all labor, material, and equipment necessary to accomplish the tasks, except where asbestos is determined to be present.

C. *Operating Cost* – The amount required for the maintenance and administration of The Property on a day-to-day basis. These include, but are not limited to utilities, general cleaning, and upkeep, taxes or levies of any kind against the property by any entity (with the exception of property taxes), subscription fees, maintenance contracts, and insurance on the building and operations as outlined herein.

4. Study Period.

A. The FPC and the FMS agree that the FMS shall be allowed the right of entry on the property, for a period of 90 days following the date of this Agreement for the purpose of conducting such physical surveys, environmental surveys, audits, appraisals, engineering inspections, radon tests, termite inspections and the like as the FMS may, in its discretion, deem appropriate, at FMS's expense, as long as such inspections shall not interfere with normal business operations.

B. In the execution of the right of entry granted hereunder, the FMS covenants that it shall not commit waste nor otherwise damage the Property. The FMS further indemnifies and saves harmless the FPC from and against any and all claims, liens, damages, losses and causes of action which may be asserted by the FMS's employees, agents or any third party who enters upon the Property or conducts tests related to the Property at the request of or on the behalf of the FMS or its agents.

**Memorandum of Understanding between
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C. In the event that the Property is not suitable to the FMS in any regard, the FMS may terminate this Agreement during the 90-day Study Period, without penalty and the parties will not enter into a Contract of Sale and neither party shall have any further liability to any other party to this Agreement. However, if the FMS does not terminate this Agreement during the Study Period, the parties shall enter into a Contract of Sale providing more specific details about the terms of the transaction and scheduling a closing date. Should the FMS terminate this Agreement during the Study Period, the FMS shall provide to the FPC the results of any and all tests, inspections, audits, or surveys accomplished on the Property, at no cost to the FPC.

5. Title.

A. During the study period, FMS shall conduct a title examination and shall notify FPC of any title defects, restrictions or encumbrances that render the title unacceptable to the FMS. If a defect is found which can be remedied by legal action within a reasonable time, FPC shall, at FPC's expense, promptly take such action as is necessary to cure the defect. If FPC, acting in good faith, is unable to have such defect corrected within 90 days after notice of such defect is given to FPC, then this Agreement may be terminated by either FPC or FMS at the expiration of such 90-day period. FMS may extend the date for Settlement to the extent necessary for FPC to comply with this paragraph.

B. At Settlement, FPC shall convey to FMS good and marketable fee simple title to the Property by deed of special warranty containing English covenants of title, free of all liens, defects, tenancies, encumbrances and encroachments, except as otherwise indicated herein, and subject only to such restrictions and easements as shall then be of record which do not affect the use of the Property for FMS's intended use or render the title unmarketable.

6. Settlement and Further Agreement.

A. The parties intend to enter into an additional agreement after the inspections and title search are complete. This additional agreement shall contain the closing date (or an approximation), a list of tangible property that is included and excluded from the conveyance, any specific repairs that will be performed by FPC prior to the settlement, any specific repairs that will be assumed by FMS, a definition of repairs and maintenance that will be performed by FPC after closing, a definition of structural repairs and maintenance that will be assumed by FMS after closing, specific parameters of FPC's continued use of the property which may include days and times and/or portions of the property that will remain under FPC's control.

B. The parties acknowledge that this transaction is in both parties' best interests and the parties agree to move forward with this endeavor in good faith, with the understanding that if they are unable to agree on the specific additional items contained in this paragraph, either party may terminate this Agreement, without penalty. If the Agreement is terminated, the parties shall be responsible for their respective attorney's fees, inspection fees, and costs incurred, without reimbursement.

7. Enforceability.

A. This Agreement may not be assigned by either FPC or FMS without the written consent of the other.

B. The parties to this Agreement agree that it shall be binding upon them, and their respective personal representatives, successors and permitted assigns, and that the warranty provisions shall survive settlement.

**Memorandum of Understanding between
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C. This Agreement contains the final agreement between the parties hereto, and they shall not be bound by any terms, conditions, oral statements, warranties or representations not herein contained.

D. This Agreement shall be construed under the laws of the Commonwealth of Virginia and Augusta County shall be the venue for any enforcement action.

E. Should either party seek to enforce the terms of this Agreement, the prevailing party in any suit shall be entitled to reimbursement of its costs and reasonable attorney's fees incurred.

8. Dispute Resolution.

A. The parties recognize that disagreements and conflicts may arise in the course of the parties' relationship and shared use of the property. The parties wish to avoid litigation. If disagreements and conflicts arise that cannot be resolved on their own, they agree to submit to mediation and, if unsuccessful, to arbitration, as provided below. They recognize that mediation and arbitration may be more costly than pursuing their claims in court, but they prefer a private resolution through mediation or arbitration, rather than a public legal proceeding in court.

B. Mediation. Any disputes and controversies arising out of or in connection with this Agreement shall be submitted to nonbinding mediation with the Fair Field Center located at 590 Neff Avenue, Suite 3000, Harrisonburg, Virginia 22801, or using such other mediator or mediation service as the parties may mutually agree. The parties shall share the costs of any such mediation and shall be responsible for paying their respective attorney's fees, if they choose to participate in the mediation with legal counsel.

C. Arbitration. If the parties are unable to resolve their differences through nonbinding A.mediation, the parties agree their dispute shall be submitted to binding arbitration. The Arbitration shall be administered and conducted by The McCammon Group, Ltd. ("McCammon") according to its standard Arbitration Rules governing at the time one of the Parties initiates a claim, or such other person or organization as the parties may otherwise agree. If the parties initiate the process through McCammon, the Arbitrator shall be selected pursuant to McCammon's Arbitration Rules, or by agreement of both parties. The Arbitrator shall render their award, including a provision for payment of costs and expenses of the Arbitration, including attorney's fees, to be paid by one or both of the parties, as the Arbitrator deems just. The laws of the Commonwealth of Virginia shall govern. The parties to this Agreement agree that the decision of the Arbitrator shall be binding upon them and may be entered as a judgment in any court having jurisdiction.

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Music Notes for April 16.

During Eastertide, we will continue to hear Easter hymns written for this joyous season.

This week, the opening hymn will be *Come You Faithful, Raise the Strain*. The text for this ancient hymn was first written by Greek poet St. John of Damascus (c. 675-c. 754). One of the great theologians of the Greek church, he also wrote extensively about music, particularly Byzantine chant, as well as science and philosophy. St. John wrote the text for this hymn around the year 750.



Sullivan.



St. John of Damascus.

The music was composed by Arthur Sullivan (1842-1900), one of scores of hymn tunes he composed between 1867 and 1874, Sullivan studied at the Royal Academy of Music in London and the Leipzig Conservatory before becoming a chorister at the Chapel Royal, and returning to teach composition at the Royal Academy. He rose to worldwide fame through the operettas he composed with lyricist William Gilbert.

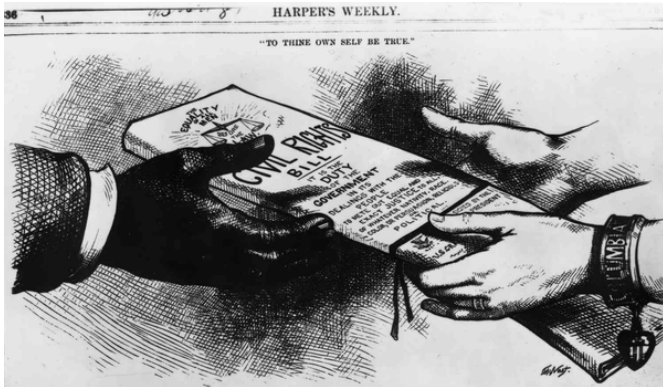
Come You Faithful, Raise the Strain has been published in various hymnals, including the Presbyterian collection Psalm and Hymns for Divine Worship.

OUR WORSHIP CHANNELS

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This Week in History.



The Civil Rights Act of 1866 is passed by the 39th Congress over the veto of President Andrew Johnson. The act declared all persons born in the United States to be citizens, "without distinction of race or color, or previous condition of slavery or involuntary servitude." This was the first federal law to define citizenship and affirm all citizens are equally protected by the law.

April 9, 1863



Apollo 13 launches from Cape Kennedy. Fifty-six hours into the flight, an oxygen tank explodes in the service module. Astronauts John L. Swigert James A. Lovell and Fred W. Haise would transfer into the lunar module, using it as a "lifeboat" for the perilous return trip to Earth, culminating with a successful splash down on April 17th.

April 11, 1970



Thomas Jefferson is born in Albermarle County, VA. Trained as a lawyer, he would practice while serving in the Virginia House of Burgesses, before his election to the Continental Congress, where he would be the primary author of *Declaration of Independence*. He would later served as Ambassador to France, Secretary of State and Vice President before being elected the 3rd U.S. President in 1801.

April 13, 1743



Imperial Japanese forces compel an estimated 76,000 American and Filipino Prisoners Of War to begin a six-day march from an airfield on the Phillipine island of Bataan to a camp near Cabanatuan. Under a blazing sun, without food or water, the 60 mile 'Death March' to the POW camp would claim the lives of between 5,000 - 18,000 prisoners, mostly Filiimo.

April 10, 1942



NASA's first shuttle, *Columbia*, is launched. The shuttle would complete 28 missions before disintegrating upon reentry February 1, 2003, killing all seven astronauts on board.

April 12, 1991



President Abraham Lincoln is mortally wounded while watching a performance of *Our American Cousin* at Ford's Theater in Washington. He would die the following morning.

April 14, 1865



The White Star Liner *Titanic* strikes an iceberg off Newfoundland and sinks. Of its 2200 passengers, over 1,500 would die, while 700 were rescued from the freezing water by the liner *Carpathia*.

April 15, 1912