

EXHIBIT D
CITY SUPPORT AGREEMENT

THIS SUPPORT AGREEMENT is made as of the ___ day of _____, 2014, by and among the **CITY COUNCIL OF THE CITY OF HARRISONBURG, VIRGINIA** (the “Council”), acting as the governing body of the City of Harrisonburg, Virginia (the “City”), the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF HARRISONBURG, VIRGINIA** (the “IDA”), and **JAMES MADISON UNIVERSITY FOUNDATION, INC.** (the “Foundation”). This Agreement has also been executed by the **TREASURER OF THE CITY OF HARRISONBURG** for the sole purpose of indicating assent to paragraph three.

RECITALS

WHEREAS, the Council has determined that the further development of the City’s tax base may require the use of economic incentives to attract certain business and commercial investment in the City; and

WHEREAS, the Council by Resolution dated _____, 2014, has identified a geographic area that is within walking distance of Court Square and the heart of the City’s downtown business center, and uniquely positioned for commercial development and construction of new or expanded facilities (as described in the Resolution, the “Development Area”); and

WHEREAS, dpM Partners, LLC (“dpM”) has submitted to the City and the Foundation a proposal for the development of a hotel and conference center (the “Project”) in downtown Harrisonburg on land owned by James Madison University (“JMU”) and;

WHEREAS, the Council desires to encourage such substantial capital investment in the Development Area in order for the City to obtain a large-scale venue and facilities unlike any other facilities in the City (or otherwise situated along the I-81 corridor north of Roanoke) that will accommodate sizable groups for multiple activities, including conferences, workshops, festivals and exhibitions, among others; and

WHEREAS, dpM is responsible for securing financing for the development of the proposed 205-room hotel (the “Hotel”), and has proposed that the Foundation provide financing in the estimated amount of \$10,000,000 for the construction of the proposed conference center (the “Conference Center”).

WHEREAS, the Foundation is a not for profit organization recognized under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “IRC”), and has public charity status under Section 509 of the IRC (“the “Foundation”). The Foundation will endeavor to obtain the estimated \$10,000,000 financing for the construction of the Conference Center pursuant to a development agreement by and between the Foundation, dpM, and JMU; and

WHEREAS, the Council, recognizing the economic benefit which will be generated by the Project, adopted on [date] a resolution authorizing the execution of this agreement providing for a non-binding obligation of the Council to appropriate certain “Project Tax Receipts” (as defined below) to the Foundation through the IDA; and

WHEREAS, the IDA adopted on [date], a resolution authorizing the execution of this agreement providing for such payments to the Foundation as described herein with respect to the Conference Center; and

WHEREAS, the animating purposes for economic incentives by the City in connection with the Development Area from time to time are the significant public benefits that shall be derived from (i) promoting a strong, viable economy in the City, and in particular, boosting existing businesses and stimulating substantial commercial development in the City's downtown area, (ii) increasing the City's sources of tax revenues, and (iii) providing additional employment opportunities for the citizens of the City; and

WHEREAS, the City has undertaken significant due diligence over a period of several months and engaged Hotel & Leisure Advisors, LLC to conduct a market study (the "Independent Study") and provide and describe financial projections related specifically to the Project; and

WHEREAS, without the realization of the Project, the City would continue to have limited economic expectations for the Development Area; and

WHEREAS, pursuant to Section 15.2-953 of the Code of Virginia, 1950, as amended (the "Virginia Code"), the City is authorized to make gifts, donations and appropriations of money from time to time to the Industrial Development Authority of City of Harrisonburg, Virginia (the "Authority") for the purpose of promoting economic development; and

WHEREAS, the Council duly established the Authority on April 24, 1973, with all such powers as granted under the Industrial Development and Revenue Bond Act as set forth in Chapter 49 of Title 15.2 of the Virginia Code; and

WHEREAS, pursuant to Section 15.2-4905 of the Virginia Code, the Authority may accept contributions, grants and other financial assistance from the City in order to make grants for the furtherance of economic development, among other things; and

WHEREAS, based on the findings in the Independent Study, among other animating reasons as set forth herein, the Council now desires to enter into this Support Agreement to ensure the construction of the Conference Center and the economic benefits to the City flowing therefrom.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing and of the mutual covenants herein set forth, the parties hereto agree as follows:

1. For purposes of this Agreement, the following terms shall have the meanings ascribed:

(a) "*Foundation Loan*" shall mean the amortized loan undertaken by the Foundation for the Conference Center, including any renewals or refinancings thereof, whether or not at the same financial institution. (The term does not include a temporary, interest-only construction loan.) The City must consent to any Foundation Loan, but such consent shall not be unreasonably withheld.

(b) *“Foundation Advances”* shall mean certain costs incurred by the Foundation, specifically, (i) the portion of the annual debt service on the Foundation Loan which, in any given year, is not covered by the IDA’s annual payment under paragraph five, (ii) the Foundation’s interest costs incurred for any construction loan, if the parties are unsuccessful at having such costs “rolled up” into the Foundation Loan and paid from the Foundation Loan proceeds and (iii) simple interest on the foregoing advances at the annual rate equal to the average rate of return realized by the Foundation on all of its investments for the three (3) calendar years prior to the date such interest is paid, provided, however, that in no event shall the interest paid by the City to the Foundation for such Foundation Advancements be less than four percent (4%) or greater than eight percent (8%) per annum. The exact formula for determining the interest rate to be paid on Foundation Advancements is set forth on Exhibit 1 this Support Agreement.

(c) *“Moral Obligation”* shall mean a promise without the force of law and which creates no legal obligations, but is nevertheless intended to be relied upon by the promisee and induce the promisee to take certain action.

(d) *“Project Tax Receipts”* shall mean receipts of the City for lodging or occupancy taxes, property taxes, meals taxes, sales taxes, excise taxes, and business, professional, and occupational license taxes or fees derived directly from the Project, businesses operating there, and transactions occurring there. Excluded from the definition of Project Tax Receipts are utility taxes and fees assessed by the City for services provided, such as building permits fees.

2. The Foundation, agrees to work in good faith to secure all necessary funds, and if it succeeds in securing such financing, to advance all costs associated with the construction of the Conference Center.

3. Beginning on the September 1 after the City of Harrisonburg has issued a Certificate of Occupancy for both the Hotel and the Conference Center, and on every September 1 thereafter, the Treasurer will calculate the Project Tax Receipts for the preceding fiscal year and report the total to the City and to the Foundation in a manner consistent with § 58.1-3 of the Code of Virginia.

4. The City issues its solemn Moral Obligation to the Foundation that from time to time each year depending on the Foundation Loan repayment schedule but no later than December 1 of each year, it will appropriate to the IDA the Project Tax Receipts as reported by the Treasurer.

5. The IDA issues its solemn Moral Obligation to the Foundation that within 30 days of receiving an appropriation from Council of Project Tax Receipts, but no later than on or before December 31 of each year, it will pay to the Foundation the Project Tax Receipts as appropriated by the City.

6. Payments made by the IDA shall be applied to Foundation Advancements first and then to the Foundation Loan.

7. This Agreement shall remain in full force and effect for twenty-one (21) years from the date of the Certificate of Occupancy for the Conference Center and the Certificate of Occupancy for the Hotel (or the latter thereof). In the event the Foundation Loan and Foundation Advancements are not paid in full by such date, Council (i) recommends that its successor on such date enter into an appropriate extension of this Support Agreement to ensure that the Foundation is reimbursed for the

full amount of the Foundation Loan and Foundation Advancements, and (ii) declares that the failure to do so would violate fundamental principles of fairness.

8. The Council hereby undertakes a non-binding obligation to appropriate an amount equal to the Project Tax Receipts from time to time pursuant to the terms of this Support Agreement, to the fullest degree and in such manner as is consistent with the Constitution and laws of the Commonwealth of Virginia. The Council, while recognizing that it is not empowered to make any binding commitment to make such appropriations in future fiscal years, hereby states its intent, to make such appropriations in future fiscal years, and hereby recommends that future City Councils do likewise.

9. Nothing herein contained is or shall be deemed to be a lending of the credit of the City to the IDA, the Foundation, or to any other person, and nothing herein contained is or shall be deemed to be a pledge of the faith and credit for the taxing power of the City, nor shall anything herein contained legally bind or obligate the Council to appropriate funds for the purposes described herein.

10. The City shall have the right to terminate this Support Agreement upon 10 days' written notice to the Foundation if (i) either the Hotel or the Conference Center ceases operation (or is not open to the general public) for twenty-four (24) consecutive months, or (ii) if the Foundation files for protection under the United States Bankruptcy Code or is otherwise adjudged insolvent. For purposes of clause (i) above, the City shall have no right to terminate if JMU or the Foundation contract with a third party for the operation of the Project within the 24-month period, and the third party commences such operations within 150 days after the expiration of the 24-month period.

Further, the City shall have the right to terminate this Support Agreement if JMU operates the Project itself and denies that it is liable for any taxes associated with the Project.

11. Any notices or requests required to be given hereunder shall be deemed given if sent by registered or certified mail, postage prepaid, addressed:

(i) if to the City or the IDA, to the Harrisonburg City Municipal Building,
Harrisonburg, Virginia 22801, Attention: City Manager;

(ii) if to the Foundation, to Thomas H. Schaeffer, President, James Madison
University Foundation, Inc., 1320 South Main Street, MSC 8501, Harrisonburg, Virginia
22807.

Any party may designate any other address for notices or requests by giving notice.

12. The City and the IDA agree that the Foundation may (i) assign this Agreement (including all its rights and obligations) to a wholly owned limited liability company which would undertake the Foundation's role in the Project, (ii) pledge this Agreement as security for any loan related to the Project. The City and the IDA will give such further assurances to allow the Foundation to take the actions specified in this paragraph. Further, should the maker of the Foundation Loan require payments

more frequently than annually, the parties will negotiate in good faith to apply the principles set forth herein to any such payment schedule.

IN WITNESS WHEREOF, the parties hereto have each caused this Support Agreement to be executed in their respective names as of the date first above written.

CITY COUNCIL OF HARRISONBURG, VIRGINIA

By: _____
Mayor

INDUSTRIAL DEVELOPMENT AUTHORITY
OF THE CITY OF HARRISONBURG, VIRGINIA

By: _____
Chairman

TREASURER, CITY OF HARRISONBURG
(For paragraph three only.)

By: _____

JAMES MADISON UNIVERSITY FOUNDATION, INC.

By: _____
President

CERTIFICATE OF CITY ATTORNEY

I, G. Chris Brown, am the duly appointed City Attorney for the City of Harrisonburg. I opine to the Foundation that the foregoing Support Agreement has been properly authorized by the Harrisonburg City Council and the Harrisonburg Industrial Development Authority, and further, that the agreement is enforceable according to its terms.
