

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") is effective as of the 15th day of January, 2015, by and between CITY OF HARRISONBURG, ("Seller"), and COMMONWEALTH OF VIRGINIA, JAMES MADISON UNIVERSITY ("Purchaser").

For and in consideration of the mutual covenants herein set forth, it is agreed as follows:

1. **Agreement to Sell and Convey.**

Seller hereby agrees to sell and convey to Purchaser and Purchaser hereby agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, all those certain parcels of improvements and land lying and being situated in the City of Harrisonburg, Virginia, containing an aggregate of approximately 3.30 acres, being identified as Tax Map No. 86-D-2, 1630 Driver Drive and more particularly described on a plat prepared by J. Adam Bryant, Land Surveyor, attached hereto and made a part hereof, together with the following:

- a. All buildings and improvements situated thereon; except those buildings and improvements removed or altered in accordance with the facility closure plan described in the Addendum as to Environmental Matters attached hereto
- b. All fixtures, equipment and machinery located on, attached to, or used in connection with the buildings and improvements except for that which is designated for removal, destruction or other disposal and which are listed on Exhibit B, ;
- c. Such other rights, interests, and properties as may be specified in this Agreement to be sold, transferred, assigned or conveyed by Seller to Purchaser.

The parcels of land described on Exhibit A together with the rights, interests and other properties described above, is collectively called the "Premises."

2. **Purchase Price.**

Seller shall convey to Purchaser and Purchaser shall purchase from Seller the Premises for a purchase price of Four Million Two Hundred Thousand Dollars (\$4,200,000.00) (the "Purchase Price"). Payment of the Purchase Price, less any deductions herein authorized, shall be by cash, wire transfer or check from Purchaser, delivered to the Settlement Agent (hereinafter defined) at Settlement (hereinafter defined), with disbursement to Seller upon recordation of the Deed.

3. **Environmental Matters.**

a. Except as may be set out in an addendum attached hereto, Seller warrants and represents that to the best of Seller's knowledge, information and belief, there have never been, nor are there now, any underground storage tanks on the Premises; nor has there been any activity on the Premises which has been conducted, or is being conducted, except in compliance with all statutes, ordinances, regulations, orders, permits and common law requirements concerning (1) handling of any toxic or hazardous substances, (2) discharges of toxic or hazardous substances to the air, soil, surface water or groundwater, and (3) storage, treatment or disposal of any toxic or hazardous substances at or connected with any activity on the Premises; nor is there any contamination present on or in the Premises; nor is there any of

the following present on or in the Premises: (i) polychlorinated biphenyls or substances containing polychlorinated biphenyls; (ii) asbestos or materials containing asbestos; (iii) urea formaldehyde or materials containing urea formaldehyde; (iv) lead or lead-containing paint; or (v) radon. The term "contamination" shall mean the unconfined presence of toxic or hazardous substances on or in the Premises, or arising from the Premises, which may require remediation under any applicable law. For purposes of this Agreement, "hazardous substance(s)" shall have the meaning of "hazardous substance" set forth in 42 U.S.C. §9601(14), as amended, and of "regulated substance" at 42 U.S.C. §6991(2), as amended, and of any other substances which may be the subject of liability pursuant to any environmental law of the United States or the Commonwealth of Virginia. If Seller has any knowledge to the contrary, Seller has checked here to indicate that an addendum labeled "Addendum as to Environmental Matters" is attached in which Seller has set forth the details of such knowledge.

b. To the extent permitted by Virginia Law, Seller hereby agrees to indemnify and hold harmless Purchaser from any and all claims, suits, judgments, damages, fines, penalties, liability, costs and expenses (including for reasonable fees for costs and expenses for any required attorneys, consultants and experts) resulting or arising from the discovery of any toxic or hazardous substance on, in or arising from, or contamination of, the Premises, as defined above, except (i) those which are a result of any activity of Purchaser.

4. Documents; Records; Warranties.

To the extent that Seller has any of these in Seller's possession or can readily obtain them, Seller agrees to provide Purchaser with, or access to, at no cost, on or before Settlement (hereinafter defined), any physical or topographic surveys, environmental reports, building inspection reports, equipment repair and maintenance records, any warranties in effect for the improvements and equipment, and other similar documents that Purchaser may reasonably request.

5. Seller's Ownership; Leases

Seller warrants and represents that it is the owner of the Premises; there are no other contracts for sale or options involving the Premises and Seller has not entered into any oral or written leases with any third parties affecting or relating to the Premises. Between the date Seller executes this Agreement and Settlement, Seller shall not subject the Premises to or consent to any leases, liens, encumbrances, covenants, conditions, restrictions, easements, rights of way, or agreements, or take any other action affecting or modifying the status of title or otherwise affecting the Premises, without the written consent of the Purchaser.

6. Zoning and Regulations; Condemnation

The Premises is zoned R-3, Multi-Family Residential and can be changed to Commercial or Institutional Use. The Seller acknowledges that the Purchaser is an entity of the Commonwealth of Virginia and not subject to Seller's zoning regulations.

7. Actions or Suits.

Unless set forth by Seller in an attachment to this Agreement, Seller warrants and represents that there are no actions or suits in law or equity or proceedings by any governmental agency now pending or, to the knowledge of the Seller, threatened against Seller in connection with the Premises, and there is no outstanding order, writ, injunction or decree of any court or governmental agency affecting the Premises.

8. Proffers and Commitments.

Seller represents there has not been made and will not be made, without Purchaser's consent, any proffers or other commitments relating to the Premises, which would impose any obligation on Purchaser or its successors and assigns, after Settlement, to make any contribution of money or dedications of land or to construct, install or maintain any improvements of a public or private nature on or off the Premises.

9. Other Agreements.

Seller warrants and represents that the execution and delivery of this Agreement, the completion of the transaction(s) contemplated hereby, and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, or conflict with, any agreement, indenture, or other instrument to which Seller is a party or by which it or the Premises is bound, or any judgment, decree, order, or award of any court, governmental body or arbitrator, or any law, rule or regulation applicable to Seller.

10. Other Adverse Facts.

Seller knows of no materially adverse fact, affecting or threatening to affect the Premises which has not been disclosed to Purchaser in writing. Between the date Seller executes this Agreement and Settlement, Seller will notify Purchaser in writing of any events which occur or any facts of which it becomes aware which would make any of its representations or warranties false or misleading. Except as otherwise permitted by Purchaser in writing, in its sole discretion, each of the warranties or representations made in this Agreement by Seller shall be true and correct as of the date of Settlement.

11. Settlement.

a. Settlement and delivery of possession shall be Thirty (30) days after the completion of Seller's obligations under the Closure Plan referred to on the Addendum as to Environmental Matters, including delivery to Purchaser of all required documentation, or as soon thereafter as practicable ("Settlement"), allowing a reasonable time for preparation and approval of documents and correction of defects reported as a result of a title examination, survey or inspections of the Premises. Settlement shall be held at the offices of Valley Southern Title, or at such other place as the parties may agree. Purchaser shall deliver to Seller, prior to Settlement, a fully executed quitclaim deed conveying Seller's interest in the Premises to Purchaser (the "Deed"). The Deed shall be in a form satisfactory to the Seller.

b. Seller shall deliver to Purchaser at Settlement an affidavit, on a form acceptable to Purchaser or Purchaser's title insurance company but without warranty or indemnification provisions, signed by Seller, that no labor or materials have been furnished to the Premises within the statutory period for the filing of mechanics' or materialmen's liens against the Premises, or if labor or materials have been furnished during the statutory period, an affidavit that the costs thereof have been paid in full and no other persons or entities have the right of possession of the Premises (the "Seller's Affidavit").

c. Seller agrees to execute at Settlement any affidavit or forms required by the Internal Revenue Service or the Virginia Department of Taxation to report this transaction and/or to exempt the Purchaser from any withholding requirements under applicable law (the "Tax Certificate").

d. Seller agrees to deliver to Purchaser or Settlement Agent the following at or prior to Settlement:

- (i) The Deed, drafted by Seller, and executed by Purchaser.
- (ii) The Seller's Affidavit
- (iii) The Tax Certificate
- (iv) A signed closing or settlement statement prepared or approved by Settlement Agent;
- (v) Any other documents reasonably required by Settlement Agent or Purchaser; and
- (vi) An ordinance duly enacted in accordance with state and local law vacating the public right of way over Driver Drive and conveying any interest the Seller may have therein to the Purchaser.
- (vii) At closing, the parties shall enter into a mutually acceptable lease for Seller's continued use of the space shown as Exhibit C as a transfer facility.

12. Title.

a. The Premises shall be sold as is, with no warranties

b. If Purchaser's title report reveals any defect in title and Purchaser is unwilling to waive such defect, Purchaser may immediately terminate this agreement upon written notice to Seller and no party shall have any further liability hereunder.

13. Expenses of Settlement.

a. Purchaser shall pay for its own attorney's fees as well as other charges customarily paid by a purchaser of real estate in Virginia; to the extent the Purchaser is not lawfully exempt therefrom.

b. Seller shall pay for its own attorney's fees as well as charges customarily paid by a seller of real estate in Virginia, including the Virginia Grantor's Tax, if applicable.

c. All real estate taxes, assessments, and utility charges, if any, shall be prorated as of Settlement.

14. Risk of Loss.

All risk of loss or damage to the Premises shall be borne by Seller until Settlement. However, in the event of any loss of or damage to the Premises, or any part thereof, prior to Settlement, Purchaser shall have the option, in its sole discretion, to (i) terminate this Agreement or (ii) proceed to Settlement as required hereunder, without decrease in the Purchase Price, conditioned upon Seller assigning all its interest in insurance or other payments for loss or damage to the Premises. In the event of condemnation or threat of condemnation of any part of the Premises prior to Settlement, Purchaser shall have the option, in its sole discretion, to (i) terminate this Agreement or (ii) proceed to Settlement without decrease in the Purchase Price conditioned upon any condemnation award being paid, credited, or assigned, as appropriate, to Purchaser at Settlement.

15. Default.

In the event of any default, the non-defaulting party shall be entitled to pursue any remedies at law or in equity in connection with the default of the other party. The election to terminate this Agreement under the terms hereof shall not constitute a default. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of Seller, Purchaser or the Commonwealth of Virginia.

16. Brokerage.

Each party represents to the other that it has not engaged the services of any real estate broker or agent in connection with the Premises and/or this Agreement.

17. Prior Agreements; Merger.

This Agreement supersedes any and all prior understandings and agreements between the parties and constitutes the entire agreement between them. No representations, warranties, conditions or statements, oral or written, not contained herein shall be considered a part hereof. This Agreement may not be amended, altered, or modified except by an instrument in writing signed by the party sought to be charged therewith.

18. Miscellaneous.

Subject to the provisions hereof, this Agreement shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and permitted assigns. No assignment of this Agreement shall be permitted except with the written consent of the other party, which consent shall not be withheld unreasonably. The warranties, representations and terms of this Agreement shall survive delivery of the Deed and shall not be merged therein.

19. Notices.

Any notices required or permitted to be given hereunder shall be deemed to have been properly given if sent by United States certified or registered mail, return receipt requested, postage prepaid, or if delivered in hand, as follows:

If to Purchaser:
James Madison University
Office of Real Property & Space Management
1015 Harrison Street MSC 5806
Harrisonburg, VA 22807

If to Seller:
City of Harrisonburg
c/o Mr. Chris Brown, Esq.
345 South Main Street
Harrisonburg, VA 22801

or to such other persons or addresses as the parties may hereafter direct by written notice. Notices, except those hand delivered, shall be deemed delivered two (2) days after being deposited with the United States Postal Service. Hand delivered notices shall be deemed delivered upon actual delivery to the person noted above.

20. Governing Law.

Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all terms and provisions hereof shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

21. Execution and Delivery of Agreement.

a. The date upon which this Agreement shall be finally executed by Seller and by the authorized representative of Purchaser (with the approval described in Paragraph 21b) shall be the effective date ("Effective Date") hereof.

b. Notwithstanding the foregoing, this Agreement shall be effective and binding upon Purchaser only upon approval by the Department of General Services, Division of Engineering and Buildings, pursuant to Chapter 2 (*Fee Acquisition*) of the Department of General Services/Division of Engineering and Buildings' Real Property Management Manual.

c. Settlement under this Agreement, and the acceptance of delivery and recordation of the Deed from Seller, shall be expressly subject to and contingent upon the final written approval of the Governor of Virginia or his designee, which shall be appended to and recorded with the Deed from Seller, and which final approval is required by Virginia Code §2.2-1149. The Purchaser may immediately terminate this Agreement upon the decision of the Governor not to give final written approval of this acquisition.

[Signature Page to follow]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals.

SELLER: CITY OF HARRISONBURG

By: [Signature]
Date: 12/21/15

STATE OF VIRGINIA
CITY/COUNTY OF Harrisonburg, to wit:

The foregoing Agreement was acknowledged before me this 21 day of December 2015, by Kurt D. Hodger, as City Manager of Harrisonburg.

My commission expires: 6/30/19
My Registration No.: 336202



[Signature]
Notary Public

PURCHASER: THE VISITORS OF JAMES MADISON UNIVERSITY

By: [Signature]
Jini G. Cook
Title: Director of Real Property & Space Management
Date: 12/21/15

STATE OF VIRGINIA
CITY OF HARRISONBURG, to wit:

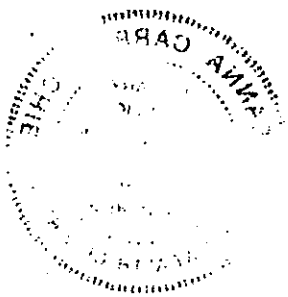
The foregoing Agreement was acknowledged before me this 21st day of DECEMBER, 2015, by Jini G. Cook, as Director of Real Property and Space Management of James Madison University, a corporation and institution of higher education of the Commonwealth of Virginia, on behalf of the university.

My commission expires: 03-31-2018
My Registration No.: 7608736

[Signature]
Notary Public




My Commission Expires June 30, 2019
Reg. # 336202
Commonwealth of Virginia
NOTARY PUBLIC
Pamela Sue Limmy



APPROVED AS TO FORM:
OFFICE OF THE ATTORNEY GENERAL

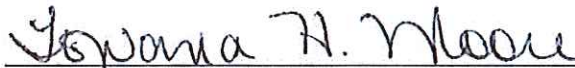
By: 
John F. (Jack) Knight
Assistant Attorney General

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: 
Chris Brown, Attorney to the City of Harrisonburg

APPROVED:

Pursuant to § 2.2-1149, Code of Virginia (1950), as amended, and further pursuant to a Memorandum of Understanding between James Madison University and Secretary of Administration and Finance, dated September 21, 2004, as authorized by § 4-508(h)(5) of Chapter 1042, 2003 Acts of Assembly, and a Memorandum of Understanding between James Madison University and the Secretary of Administration, dated September 21, 2004, as authorized by § 4-508(h)(1)(a) of Chapter 1042, 2003 Acts of Assembly, which authority is continuing, I hereby approve execution and delivery of this Real Estate Purchase Agreement.



By: Towana H. Moore

Title: Associate Vice President, Business Services

Date: 12/21/15

ADDENDUM AS TO ENVIRONMENTAL MATTERS

DATE: January ____, 2015
SELLER: City of Harrisonburg
PURCHASER: The Visitors of James Madison University
RE: Environmental Matters at Resource Recovery Facility
1630 Driver Drive, Tax Map # 086-D-2

The parties acknowledge that the Seller will procure an Environmental Site Assessment (ESA) by Environmental Resources Management, Inc (“ERM”) Seller shall also procure a Resource Recovery Facility Closure Plan (“The Closure Plan”) from ERM at Seller’s cost. Seller shall provide Purchaser with a copy of such Closure Plan and file the Closure Plan with the Virginia Department of Environmental Quality (DEQ). Promptly upon DEQ’s approval of the Closure Plan, the Seller shall work diligently to complete all remediation steps required by the Closure Plan.

Seller shall provide Purchaser with documentation acceptable to Purchaser evidencing the completion of the Closure Plan. Such documentation shall include, at minimum, written confirmation from DEQ that Seller has completed all remediation and other work required by DEQ. The parties acknowledge that Purchaser reserves the right to hire its own environmental consultant to conduct an inspection of the Premises.

One Recognized Environmental Condition (REC) associated with prior waste ash storage on site. Abatement/ remediation steps to be recommended in a phase II ESA report.

Completion of the abatement/remediation work to Purchaser’s satisfaction is a condition precedent to closing.

Phase I ESA report

**EXHIBIT A
PRELIMINARY PLAT**

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EXHIBIT B

Equipment to be Removed by Seller Prior to Settlement

Misc. Tools
WTE Stack
Grader/Trash Handling Equip
Fork Lift
Man Lift
Ash Containers
2.5 Mega Watt Generator
Generator Switchgear