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HOUSE BILL NO. 2249

Offered January 14, 2013

A *BILL to amend and reenact Exhibit G of the second enactment of Chapters 933 and 943 of the Acts of Assembly of 2006, as amended by Chapters 675 and 685 of the Acts of Assembly of 2009, relating to the management agreement between the Commonwealth and the College of William and Mary; responsibilities of the Building Official.*

Patron—Cox, M.K.

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That Exhibit G of the second enactment of Chapters 933 and 943 of the Acts of Assembly of 2006, as amended by Chapters 675 and 685 of the Acts of Assembly of 2009, is amended and reenacted as follows:

EXHIBIT G
MANAGEMENT AGREEMENT
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA
PURSUANT TO
THE RESTRUCTURED HIGHER EDUCATION
FINANCIAL AND ADMINISTRATIVE OPERATIONS
ACT OF 2005
POLICY GOVERNING CAPITAL PROJECTS
THE RECTOR AND VISITORS OF
THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA
POLICY GOVERNING CAPITAL PROJECTS

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the College of William and Mary in Virginia may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional pre-authorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The College's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the College's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources.

This Policy is intended to encompass and implement the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the College's Enabling Legislation, are not affected by this Policy.

II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Visitors of the College of William and Mary in Virginia.

"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

"Capital Professional Services" means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.

59 "Capital project(s)" means the acquisition of any interest in land, including improvements on the
60 acquired land at the time of acquisition, new construction, improvements or renovations, and Capital
61 Leases.

62 "College" means the College of William and Mary in Virginia, (State Agency 204), and the Virginia
63 Institute of Marine Science, (State Agency 268).

64 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a
65 public institution of higher education of the Commonwealth of Virginia that has entered into a
66 management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of
67 the Act.

68 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
69 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
70 of the individual public institutions of higher education of the Commonwealth, and as provided in
71 §§ 2.2-2817.2, 2.2-2905, and 51.1-126.3.

72 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on
73 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing
74 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

75 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
76 9(a), 9(b), or 9(c), or 9(d), if the debit service payments are made or ultimately are to be made from
77 general government funds, as defined in the December 20, 2004 Report to the Governor and General
78 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

79 III. SCOPE OF POLICY.

80 This Policy applies to the planning and budget development for capital projects, capital project
81 authorization, and the implementation of capital projects, whether funded by a general fund
82 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other
83 sources.

84 This Policy provides guidance for 1) the process for developing one or more capital project programs
85 for the College, 2) authorization of new capital projects, 3) procurement of Capital Professional Services
86 and construction services, 4) design reviews and code approvals for capital projects, 5) environmental
87 impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land
88 dispositions, 9) project management systems, and 10) reporting requirements.

89 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

90 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the
91 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
92 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
93 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
94 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,
95 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
96 implementation of those duties and responsibilities pursuant to the College's usual delegation policies
97 and procedures.

98 V. CAPITAL PROGRAM.

99 The President shall adopt a system for developing one or more capital project programs that defines
100 or define the capital needs of the College for a given period of time consistent with the College's
101 published Master Plan. This process may or may not mirror the Commonwealth's requirements for
102 capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major Capital
103 Projects that are to be funded entirely or in part by a general fund appropriation of the General
104 Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements
105 for capital plans. The Board may approve amendments to the program for Major Capital Projects
106 annually or more often if circumstances warrant.

107 It shall be College policy that each capital project program shall meet the College's mission and
108 institutional objectives, and be appropriately authorized by the College. Moreover, it shall be College
109 policy that each capital project shall be of a size and scope to provide for the defined program needs,
110 designed in accordance with all applicable building codes and handicapped accessibility standards as
111 well as the College's design guidelines and standards, and costed to reflect current costs and escalated to
112 the mid-point of anticipated construction.

113 VI. AUTHORIZATION OF CAPITAL PROJECTS.

114 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its
115 size, scope, budget, and funding. The President, acting through his designee, shall adopt procedures for
116 approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that
117 are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds
118 from State Tax Supported Debt, shall require both Board of Visitors approval and those
119 pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the
120 State's process for capital budget requests.

121 It shall be the policy of the College that the implementation of capital projects shall be carried out so
 122 that the capital project as completed is the capital project approved by the Board for Major Capital
 123 Projects and according to the procedures adopted by the President, acting through his designee, for all
 124 other capital projects. The President shall ensure strict adherence to this requirement.

125 Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond
 126 the plans and justifications that were the basis for the capital project's approval, either before or during
 127 construction, unless approved in advance as described above. Minor changes shall be permissible if they
 128 are determined by the President, acting through his designee, to be justified.

129 Major Capital Projects may be submitted for Board of Visitors authorization at any time but must
 130 include a statement of urgency if not part of the approved Major Capital Project program.

131 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 132 SERVICES.

133 It shall be the policy of the College that procurements shall result in the purchase of high quality
 134 services and construction at reasonable prices and shall be consistent with the Policy Governing the
 135 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials
 136 adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and
 137 Construction, which is attached as Attachment 1 to that Policy. Specifically, the College is committed
 138 to:

139 Seeking competition to the maximum practical degree, taking into account the size of the anticipated
 140 procurement, the term of the resulting contract and the likely extent of competition;

141 Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the
 142 appearance of any impropriety prohibited by State law or College policy;

143 Making procurement rules clear in advance of any competition;

144 Providing access to the College's business to all qualified vendors, firms and contractors, with no
 145 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in
 146 cooperative procurements and to meet special needs of the College;

147 Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against
 148 employees or applicants because of race, religion, color, sex, national origin, age, disability or other
 149 basis prohibited by State law except where there is a bona fide occupational qualification reasonably
 150 necessary to the contractor's normal operations;

151 Providing for a non-discriminatory procurement process, and including appropriate and lawful
 152 provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small
 153 businesses and to promote and encourage a diversity of suppliers.

154 The President, acting through his designee, is authorized to develop implementing procedures for the
 155 procurement of Capital Professional Services and construction services at the College. The procedures
 156 shall implement this Policy and provide for:

157 A system of competitive negotiation for Capital Professional Services, including a procedure for
 158 expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2,
 159 and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of
 160 Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

161 A prequalification procedure for contractors or products;

162 A procedure for special construction contracting methods, including but not limited to design-build
 163 and construction management contracts; and

164 A prompt payment procedure.

165 The College also may enter into cooperative arrangements with other private or public health or
 166 educational institutions, healthcare provider alliances, purchasing organizations or state agencies where,
 167 in the judgment of the College, the purposes of this Policy will be furthered.

168 VIII. DESIGN REVIEWS AND CODE APPROVALS.

169 The Board of Visitors shall review the design of all Major Capital Projects and shall provide final
 170 Major Capital Project authorization based on the size, scope and cost estimate provided with the design.
 171 Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be
 172 required. For all capital projects other than Major Capital Projects, the President, acting through his
 173 designee, shall adopt procedures for design review and project authorization based on the size, scope and
 174 cost estimate provided with the design. It shall be the College's policy that all capital projects shall be
 175 designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code
 176 (VUSBC) standards and the applicable accessibility code.

177 The President shall designate a Building Official responsible for building code compliance at the
 178 College, including the Virginia Institute of Marine Science and ~~Richard Bland College~~, by either (i)
 179 hiring an individual to be the College Building Official, or (ii) continuing to use the services of the
 180 Department of General Services, Division of Engineering and Buildings, to perform the Building Official
 181 function. If option (i) is selected, the individual hired as the College Building Official shall be an

182 employee of the College who has no other assigned duties or responsibilities at the institution and who
183 is not employed by any firm or business providing facility services to the College, a registered
184 professional architect or engineer, and certified by the Department of Housing and Community
185 Development to perform this Building Official function. The College Building Official shall issue
186 building permits for each capital project required by the VUSBC to have a building permit, and shall
187 determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all
188 capital projects requiring such certification. Prior to issuing any such certification, this individual shall
189 ensure that the VUSBC and accessibility requirements are met for that capital project and that such
190 capital project has been inspected by the State Fire Marshal or his designee as required. When serving
191 as the College Building Official, such individual shall organizationally report directly and exclusively to
192 the Board of Visitors. If the College hires its own College Building Official, it shall fulfill the code
193 review requirement by maintaining a review unit of licensed professional architects or engineers who are
194 certified by the Department of Housing and Community Development in accordance with § 36-137 of
195 the Code of Virginia for such purpose and who shall review plans, specifications and documents for
196 compliance with building codes and standards and perform required inspections of work in progress and
197 the completed capital project. No individual licensed professional architect or engineer hired under the
198 College's personnel system as a member of the review unit shall also perform other building
199 code-related design, construction, facilities-related project management or facilities management
200 functions for the College.

201 IX. ENVIRONMENTAL IMPACT REPORTS.

202 It shall be the policy of the College to assess the environmental, historic preservation, and
203 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts
204 to the extent practicable. The College shall develop a procedure for the preparation and approval of
205 environmental impact reports for capital projects, in accordance with State environmental, historic
206 preservation, and conservation requirements generally applicable to capital projects otherwise meeting
207 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of
208 \$300,000 or more.

209 X. BUILDING DEMOLITIONS.

210 It shall be the policy of the College to consider the environmental and historical aspects of any
211 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The
212 College shall develop a procedure for the preparation and review of demolition requests, including any
213 necessary reviews by the Department of Historic Resources and the Art and Architectural Review Board
214 in accordance with State historic preservation requirements generally applicable to capital projects in the
215 Commonwealth. Further, for any property that was acquired or constructed with funding from a general
216 fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, general
217 laws applicable to State owned property shall apply.

218 XI. BUILDING OR LAND ACQUISITIONS.

219 It is the policy of the College that capital projects involving building or land acquisition shall be
220 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property.
221 The President, acting through his designee, shall ensure that the project management system
222 implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters
223 relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that
224 any building or land acquired by the College shall be suitable for its intended purpose, that the
225 acquisition can be made without substantial risk of liability to the College and that the cost of the real
226 property to be acquired, together with any contemplated development thereof, shall be such that
227 compliance with the provisions of Section VI of this Policy is achieved. In addition, the President,
228 acting through his designee, shall ensure that, where feasible and appropriate to do so, the following
229 specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.

230 A. Environmental and Land Use Considerations.

231 It is the policy of the College to reasonably cooperate with each locality affected by the acquisition.
232 Such cooperation shall include but not be limited to furnishing any information that the locality may
233 reasonably request and reviewing any requests by the locality with regard to any such acquisition. The
234 College shall consider the zoning and comprehensive plan designation by the locality of the building or
235 land and surrounding parcels, as well as any designation by State or federal agencies of historically or
236 archeologically significant areas on the land. Nothing herein shall be construed as requiring the College
237 to comply with local zoning laws and ordinances.

238 B. Infrastructure and Site Condition.

239 The President, acting through his designee, shall ensure that, in the case of capital projects involving
240 the acquisition of buildings or land, the project management systems implemented under Section XIII
241 below provide for a review of the following matters prior to acquisition of the building or land: that any
242 land can be developed for its intended purpose without extraordinary cost; that an environmental
243 engineer has been engaged by the College to provide an assessment of any environmental conditions on

244 the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the
245 building or land; that utilities and other services to the land are adequate or can reasonably be provided
246 or have been provided in the case of building acquisitions; and that the condition and grade of the soils
247 have been examined to determine if any conditions exist that would require extraordinary site work or
248 foundation systems.

249 C. Title and Survey.

250 A survey shall be prepared for any real property acquired, and an examination of title to the real
251 property shall be conducted by a licensed attorney or, in the alternative, a commitment for title
252 insurance shall be procured from a title insurance company authorized to do business in the
253 Commonwealth. Based upon the survey and title examination or report, the President, acting through his
254 designee, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to
255 the College in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements or
256 other matters that may have a significant adverse effect upon the College's ability to own, occupy,
257 convey or develop the real property.

258 D. Appraisal.

259 An appraisal shall be conducted of the real property to be acquired to determine its fair market value
260 and the consistency of the fair market value with the price agreed upon by the College.

261 XII. BUILDING OR LAND DISPOSITIONS.

262 The Board of Visitors shall approve the disposition of any building or land. Disposition of land or
263 buildings, the acquisition or construction of which was funded entirely or in part by a general fund
264 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both
265 Board of Visitors approval and other approvals in accordance with general law applicable to
266 State-owned property and with the College's Enabling Legislation.

267 XIII. PROJECT MANAGEMENT SYSTEMS.

268 The President, acting through his designee, shall implement one or more systems for the management
269 of capital projects for the College. The systems may include the delegation of project management
270 authority to appropriate College officials, including a grant of authority to such officials to engage in
271 further delegation of authority as the President deems appropriate.

272 The project management systems for capital projects shall be designed to ensure that such projects
273 comply with the provisions of this Policy and other Board of Visitors policies applicable to closely
274 related subjects such as selection of architects or policies applicable to College buildings and grounds.

275 The project management systems may include one or more reporting systems applicable to capital
276 projects whereby College officials responsible for the management of such projects provide appropriate
277 and timely reports to the President on the status of such projects during construction.

278 XIV. REPORTING REQUIREMENTS.

279 In addition to complying with any internal reporting systems contained in the College's project
280 management systems, as described in Section XIII above, the College shall comply with State reporting
281 requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation
282 by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs
283 improvements on land, or renovates property, that originally was acquired or constructed in whole or in
284 part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and
285 such improvements or renovations are undertaken entirely with funds not appropriated by the General
286 Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed \$2
287 million dollars, the decision to undertake such improvements or renovations shall be communicated as
288 required by § 23-38.109 C 3 of the Act. As a matter of routine, the President, acting through his
289 designee, shall report to the Department of General Services on the status of such capital projects at the
290 initiation of the project, prior to the commencement of construction, and at the time of acceptance of
291 any such capital project.