

COMMONWEALTH OF VIRGINIA
CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK
For Part 1 – Pre-Construction Phase Services

This Contract dated this 11th day of July 2024 is between The College of William and Mary in Virginia ("Owner") and Name of Contractor ("Construction Manager," "Contractor," or "CM") and is binding among and between these parties as of the date of the Owner's signature.

RECITALS

1. The parties, their Project representatives, and contact information, including the places for delivery of Notice, are as follows:

Owner: The College of William and Mary in Virginia
Attn: Name, Project Manager
Address: Office of the University Architect
115 Grigsby Drive, Suite "C"
City, State, Zip: Williamsburg, VA, 23185
Telephone: (757) 221-4597 Fax: (757) 221-2473

CM at Risk: Name of Contractor
Attn: Name
CM's License Number: XXXXXXXXXXXX
Address: XXXXXXXXXXXX
City, State, Zip: XXXXXXXXXXXX
Telephone: (XXX) XXX-XXXX
E-mail address: xxxxxxxx@xxxxx.com
FEIN/SSN: XX-XXXXXXXX
Virginia Contractor's License #: XXXXXXXX
SCC ID #: XXXXXXX
eVA#: VSXXXXXXXXXX

Each party shall notify the other party promptly of a new Notice address. Unless and until Notice of the new address is given in the manner required for Notice, a Notice to such party is sufficient if given to the address set forth in Section 1.

2. The Owner contemplates development of the following project ("Project") identified as:
Project Title: XXXXXXXXXXXXX
Project Code (PC #): XXX-XXXXX
DEB Project Code #: XXX-XXXXX-XXX
General Project Description: XXXXXXXXXXXXXXXXX

The entirety of the Project, including Part 1 Preconstruction Services and Part 2 Construction Work is anticipated to be complete by December 31, 2025. The Owner's budget for Part 2 Construction Work is \$00,000,000 ("Owner's Total Construction Budget").

The Project Code indicated above shall be included on all Project-related material and documents including, but not limited to, Notices, Change Orders, Submittals, Requests For Information, Requests For Quotes, Field Orders, minutes of meetings, correspondence, Schedule of Values and Certificate For Payment (CO-12), and test reports.

3. The university's authority to execute this contract is governed by Article 4 under Chapter 10 (§23.1- 1004 et seq.) of Title 23.1 of the Code of Virginia, the Restructured Higher Education Administrative and Operations Act, effective July 1, 2006, as amended, and the university's Management Agreement with the Commonwealth of Virginia.

NOW THEREFORE, in consideration of the Recitals set forth above and which are part of the Contract and good and valuable consideration as set forth below, the parties agree as follows:

1. STATEMENT OF WORK

The CM shall furnish and provide all services, labor, materials, and equipment and perform all responsibilities of the CM for the Part 1 Preconstruction Scope of Services described in Attachment "B" and as generally described in this Contract in strict accordance with the Contract Documents.

The Owner authorizes the CM to perform only the Part 1 Preconstruction Scope of Services. Proceeding to execution of an agreement for and performance of Part 2 Construction Work is subject to and contingent upon (a) the CM's satisfactory performance of the Preconstruction Scope of Services under this Contract; (b) the Owner and the CM reaching agreement on the Guaranteed Maximum Price for the Part 2 Construction Work of the Project; and (c) both parties executing an agreement for Part 2 Construction Work of the Project.

Promptly upon request by Owner, the CM shall provide its proposal for the Part 2 Construction Work of the Project, including the Guaranteed Maximum Price. The CM shall endeavor in good faith and use commercially reasonable efforts to provide a Guaranteed Maximum Price which does not exceed Owner's Total Construction Budget. The CM further agrees to negotiate with the Owner in good faith in an effort to reach a mutual agreement by which the CM would provide the Part 2 Construction Work of the Project if requested by Owner.

2. CONTRACT DOCUMENTS

The following documents are incorporated by reference into this Contract as if set forth fully herein:

1. Required General Terms and Conditions – Goods and Nonprofessional Services;
2. Attachment A, the Terms and Conditions for Part 1 Pre-Construction Phase Services Contract;
3. Attachment B, Pre- Construction Phase Scope of Services;
4. Attachment C, the CM Proposal submitted by the CM dated June 27, 2024
5. Attachment D, eVA Vendor Registration Requirements;
6. Proposed Small Business vendors (SWaM).

3. TIME FOR COMPLETION

The CM shall commence its Part 1 Preconstruction Scope of Services on July 15, 2024, and shall be completed no later than December 31, 2024. After further review and after completion of the CPM schedule required by the Scope of Services, the CM may propose schedule amendments for consideration by the Owner.

The CM's Preconstruction Scope of Services under this Contract shall terminate when: (a) the parties execute an agreement for Part 2 Construction Work of the Project; (b) the parties mutually agree that the Scope of Services required by this Contract have been provided and that a GMP cannot be agreed upon; or (c) this Contract is terminated as provided in Section II.F of the Supplemental Terms and Conditions for the Part 1 - Pre-Construction Services Contract (Attachment "A").

4. COMPENSATION TO BE PAID TO THE CM

The Owner agrees to pay, and the CM agrees to accept as just and adequate compensation for the performance of the Scope of Services under this Contract, in accordance with the Contract Documents specified above, the sums and Total Contract Amount as follows:

- A. **Pre-Construction Services Fee:** The Lump Sum Amount of xxxxx-xxx thousand xxxx hundred xxxxxx-xxxx and 00/100 dollars (\$ 00,000.00).
- B. **For Reimbursable Expenses:** The following items (if any), which are described in greater detail in the Scope of Services, shall be paid for as reimbursable expenses in accordance with the Terms and Conditions for Part 1 - Pre-Construction Phase Services Contract (Attachment "A").
 - a. *None*
- C. **TOTAL CONTRACT AMOUNT:** xxxxx-xxx thousand xxxx hundred xxxxxx-xxxxx and 00/100 dollars (\$ 00,000.00).

The contract amount includes an estimated or budgeted amount of zero and 00/100 dollars (\$ 0.00) for the reimbursable expense items. The Total Contract Amount shall be adjusted upward or downward by Change Order to reflect the actual amounts of reimbursable expenses incurred and approved for reimbursement.

5. PAYMENTS

eVA Vendor Registration, and buyW&M Registration: The CM shall be a registered vendor in eVA, and with buyW&M. See Attachment “D”, **eVA Vendor Registration Requirements.**

Progress payment requests and invoices shall be submitted via email to fpdcap@wm.edu or postal delivery to P.O. Box 8795, Williamsburg, Virginia 23187-8795.

GCPay: Contract payments *may be* made through GCPay. Go to www.dgs.virginia.gov/deb to see the fee schedule and the instructions on how to process pay applications.

6. PROJECT FAMILIARITY

The CM shall visit the Project site, review the Project documents, coordinate with the Owner and A/E, and fully familiarize itself with the Project requirements as necessary to furnish all labor, materials, and equipment and perform all responsibilities of the CM in strict accordance with the Contract Documents.

IN WITNESS WHEREOF, the parties have executed this Contract on the dates set forth beside their respective signatures.

Name of Contractor

The Rector and Board of Visitors for The William & Mary

Contractor

OWNER

By: _____
(Signature in Ink) *(Date)*

By: _____
(Signature in Ink) *(Date)*

Name: XXXXXXXX

Name: Dan Pisaniello

Title: XXXXXX

Title: University Architect

Attest: _____
(Signature in Ink) *(Date)*

Attest: _____
(Signature in Ink) *(Date)*

Print Name

Print Name

Attachment A

Terms and Conditions for the Part 1 - Pre-Construction Phase Services Contract

- I. **DEFINITIONS:** Whenever used in the Contract, the following terms have the meanings set forth below, which are applicable to both the singular and plural and the male and female gender thereof:

Agency: The Agency, institution or department which is a party to the Contract. For purposes of the Contract, the term Owner shall include such Agency, whether or not the Agency owns the site or the building.

Architect, Engineer, Architect/Engineer or A/E: The Virginia licensed Architect or Engineer that contracts with the Owner to provide the architectural and engineering services for the Project. The A/E is a separate contractor and not an agent of the Owner. The term includes any subcontractors, associates or consultants employed by the A/E to assist in providing the architectural and engineering services.

Code of Virginia: Code of Virginia (1950), as amended. Sections of the Code referred to herein are noted by § xx-xx.

Construction: The term used to include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities, including any draining, dredging, excavation, grading or similar work upon real property.

Construction Manager or CM: The person or entity with whom the Owner has entered into the Contract. The CM also may be referred to as a “contractor” or “Contractor” as that term is used in the Contract Documents, the Virginia Public Procurement Act or any other laws, codes, rules or regulations applicable to the Contract or the Project.

Contract: The Contract between Owner and Construction Manager for Part 1 - Pre-Construction Phase Services (CO-9CM(1)), and the Contract Documents incorporated therein.

Total Contract Amount: The total compensation payable to the CM for performing the Part 1 Preconstruction Scope of Services, subject to modification by Change Order.

Contractor: Contractor shall mean the CM, unless the context dictates otherwise.

Day(s): Calendar day(s) unless otherwise noted.

Drawing: A page or sheet of the Plans which presents a graphic representation, usually drawn to scale, showing the technical information, design, location, and dimensions of various elements of the Project. The graphic representations include, but are not limited to, plan views, elevations, transverse and longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedules, tables and/or pictures.

Notice: Notice required by the Contract shall be given in writing to the email address or physical delivery location identified in the Contract Documents for receipt of Notice by the receiving party. A Notice is deemed to have been properly given and effective at the time such Notice is: (i) deposited with a nationally recognized overnight delivery service using no more than two (2) business day delivery service for delivery to the Notice address; (ii) hand delivered to the Notice address; or (iii) enclosed in a postage prepaid envelope addressed to the Notice address and delivered

to a United States Postal Service for delivery by prepaid certified or registered mail. Notice given by email is deemed to have been properly given and effective at the time such Notice is actually received by the email address specified for receipt of Notice.

Owner: The public body with whom the CM has entered into the Contract. The term "Owner", as used herein, shall also mean the Agency.

Person: This term includes any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

Preconstruction Services Fee: A lump sum fee for the Part 1 Preconstruction Scope of Services to be provided by the CM.

Project: The term used to refer to the Project identified in the Contract. The entire Project encompasses two parts: (1) Part 1, Preconstruction Scope of Services; and (2) Part 2, Construction of the Work. The term includes, but is not limited to, the responsibilities of the CM under this Contract as described by the Contract Documents.

Project Manager: The Project Manager shall be the Owner's designated representative on the Project. The Project Manager shall be the person through whom the Owner generally conveys written decisions and instructions. All Notices to the Owner and all information required to be conveyed to the Owner shall be conveyed to the Project Manager unless otherwise stated in the Contract. The scope of the Project Manager's authority is limited to that authorized by the Owner. The Owner may change the Project Manager from time to time and may, in the event that the Project Manager is absent, disabled or otherwise temporarily unable to fulfill his duties, appoint an interim Project Manager.

Site: The location at which the Project is to be constructed.

Subcontractor: A person having a direct contract with the CM or with any other Subcontractor for the performance of the CM's Scope of Services under this Contract.

II. GENERAL

A. FACILITIES MANAGEMENT DESIGN AND CONSTRUCTION MANUAL: This Contract is subject to the provisions of the Facilities Planning Design and Construction Manual (**DCM**) **as well as any policy, rules, guidelines, or procedures** and any revisions thereto, which are hereby incorporated into this Contract in their entirety. A copy of the manual is normally available for review on the William and Mary Website at: <https://www.wm.edu/offices/facilities/departments-directors/fpdc/references/index.php>

B. SEVERABILITY: If any provision of this Contract shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision.

C. INVOICE DOCUMENTATION:

All invoices shall show the PC #, and the CM's social security number (for individuals) or the federal employer identification number (for entities). The invoice shall generally itemize or show a breakdown of the various phases or parts of the Total Contract Amount, the value of the various phases or parts, the previously invoiced and approved amounts for payment, and the amount of the current invoice. Invoices for reimbursables shall include documentation of costs for which

reimbursement is sought. Invoices for work being performed on an hourly rate basis shall show the technical classifications, names of the persons performing the work, manhours expended, marked up hourly rates for the classification, and the extended cost amount.

- D. AUDIT:** The CM, by signing the Contract, agrees to retain all books, records, and other documents relative to the Contract for five (5) years after Final Payment, or until audited by the Commonwealth of Virginia, whichever occurs sooner. The Owner, its authorized agents, and/or State auditors shall have full access to and the right to examine any of the CM's records and materials during said period.

The CM shall provide documentation for all requests for payment for services provided on a cost reimbursement basis or an hourly rate or unit price basis. Compensation paid to the CM on these bases is subject to adjustment based on the results of any audit by or on behalf of the Owner.

E. TERMINATION OF CONTRACT:

The Owner may terminate the Contract for cause or for convenience after giving written notice to the CM as described below. The written notice shall include a statement of reasons for the termination.

Termination for Cause: If the CM should substantially breach the Contract, fail to perform the services, or any portion thereof, required by the Contract in the time and manner required, or be found in Default in accordance with Item P of the Required General Terms and Conditions – Goods and Nonprofessional Services, the Owner may terminate the Contract for cause immediately, by giving written notice to the CM, or may give the CM a stated period of time within which to remedy its breach of contract. If the CM shall fail to remedy the breach within the time allotted by the Owner, the Contract may be terminated by the Owner at any time thereafter upon written notice, effective immediately upon receipt. The Owner's forbearance in not terminating the Contract shall not constitute a waiver of the Owner's right to terminate in the future for similar breaches or failures to perform. If the Contract is terminated for cause, the CM shall be responsible for all damages incurred by the Owner as a result of the CM's breach or failure to perform, including, but not limited to, all costs and expenses incurred in securing a replacement construction manager or contractor to complete, correct and/or fulfill the CM's obligations under the Contract.

Any termination by the Owner for cause, if determined by a court of competent jurisdiction not to have been justified as a termination for cause, shall be deemed a termination for the convenience of the Owner.

Termination for Convenience: The Owner may terminate the Contract in whole or in part for convenience by delivering to CM a written notice of termination specifying the extent to which performance under the Contract is terminated and the effective date of the termination. Upon receipt of such notice, the CM must stop work, including but not limited to work performed by Subcontractors and consultants, at such time and to the extent specified in the notice.

If the Contract is terminated for convenience, the CM shall be entitled to those fees earned for services performed in accordance with the Contract prior to the notice of termination. Thereafter, the CM shall be entitled to any fees earned for services not terminated, but shall not be entitled to lost profits for the portions of the Contract which were terminated. The CM will be compensated for reasonable costs or expenses for delivery to the Owner of the products of the services for which the CM has or will receive compensation.

Delivery of Materials: Any termination shall not relieve the CM of the obligation to deliver to the Owner all products of the services for which the CM has been or will be compensated, including, but not limited to, the drawings and specifications, copies of CADD files, BIM files, cost estimates, calculations, and analyses. Unless otherwise agreed to in writing, the CM shall deliver the materials to the Owner within thirty (30) days of receipt of the notice of termination. Failure to do so shall result in the withholding of final payment and shall constitute a material or substantial breach of contract.

Compensation Due the CM: When the CM is terminated for convenience, the following method shall be utilized in computing amounts due the CM for services prior to termination:

- If terminated prior to completion of the Part 1, Preconstruction Scope of Services, the amount due shall be a negotiated amount based on the portion of services provided versus the services not completed.
- If terminated at the completion of the Part 1, Preconstruction Scope of Services, the amount due shall be the cumulative total of the fees for the services completed according to the Contract.
- Payment for the Additional Services portion of the fee, if any, shall be any portion of those services provided up through the notice of termination.
- Payment for the Reimbursable Expenses, if any, shall be based on approved reimbursable expenses incurred up through the notice of termination.

The CM shall submit invoices for all such amounts in accordance with the normal billing process, but in no event later than 60 days after the last work is performed. All amounts invoiced are subject to deductions for amounts previously paid or for amounts due the Owner.

- F. PATENTS:** The CM shall obtain all licenses necessary to use any invention, article, appliance, process or technique of whatever kind and shall pay all royalties and license fees. The CM shall hold the Owner, its officers, agents, and employees, harmless against any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of the Contract, including its use by the Owner, unless such invention, process, technique, article or appliance is specifically named in the specifications or plans as acceptable for use in carrying out the responsibilities of the CM under this Contract. If, before using any invention, process, technique, article or appliance specifically named in the specifications or plans as acceptable for use in carrying out the responsibilities of the CM under this Contract, the CM has or acquires information that the same is covered by letters of patent making it necessary to secure the permission of the patentee, or other, for the use of the same, the CM shall promptly advise the Owner and the A/E. The Owner may direct that some other invention, process, technique, article or appliance be used. Should the CM have reason to believe that the invention, process, technique, article, or appliance so specified is an infringement of a patent, and fail to inform the Owner and the A/E, the CM shall be responsible for any loss or liability due to the infringement.
- G. QUALIFICATIONS OF CM:** The Owner may make such reasonable investigations as deemed proper and necessary to determine the ability of the CM to perform the Part 2 Construction Work of the Project. The CM shall furnish to the Owner all such information and data for this purpose as may be requested. The Owner reserves the right to inspect CM's physical facilities prior to receipt of a GMP from the CM and/or the award of a contract for the Part 2 Construction Work. The Owner

further receives the right to reject any Part 2 Construction Work or GMP proposal from the CM if evidence submitted to the Owner or investigations of the CM fails to satisfy the Owner that the CM is properly qualified to undertake the Part 2 Construction Work of the Project or to complete the Work contemplated therein. If the CM fails to complete the Scope of Services under the Contract to the Owner's satisfaction or breaches the Contract, the CM shall not be a responsible bidder for any subsequent request for proposals or invitation to bid released by the Owner for the Part 2 Construction Work.

- H. E-VERIFY PROGRAM:** Pursuant to Code of Virginia § 2.2-4308.2, any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions may be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment may cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.