

OLD DOMINION UNIVERSITY

BOARD OF VISITORS
Friday, September 19, 2008

MINUTES

The Board of Visitors of Old Dominion University met in regular session on Friday, September 19, 2008, at 1:30 p.m. in the Board Room of Webb University Center on the Norfolk campus. Present from the Board were:

Marc Jacobson, Rector
Kenneth E. Ampy
Frank Batten, Jr.
William C. Chick
Linda L. Forehand
Harold W. Gehman, Jr.
Conrad M. Hall
James A. Hixon
Pamela C. Kirk
Barry M. Kornblau
Ross A. Mugler
Moody E. Stallings, Jr.
Katherine A. Treherne
Meredith B. Lee (Student Representative)

Absent were:

David L. Bernd
Kendra M. Croshaw
David W. Faeder
Robert J. O'Neill

Also present were:

John R. Broderick, President	Donna W. Meeks
Rick Berry	Jennifer Mullen
Alonzo Brandon	Carol Simpson
R. Dillard George	Karen Travis
Robert L. Fenning	Cecelia Tucker
Velvet Grant-Johnson	Geneva Walker-Johnson
Patrick B. Kelly	Rusty Waterfield
Alice McAdory	James D. Wright

CALL TO ORDER AND APPROVAL OF MINUTES

The Rector called the meeting to order at 1:30 p.m. and called on Ms. Kirk to present the minutes for approval. Ms. Kirk asked for approval of the minutes of the annual meeting held on June 13, 2008, and of the special meetings held on June 29, 2008, July 21, 2008, August 6, 2008 and August 28, 2008. Upon a motion made by Mr. Mugler and seconded by Mr. Hixon, the minutes

were approved unanimously by all members present and voting (*Ampy, Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

RECTOR'S REPORT

The Rector noted that the University is alive and well, despite the budget news from Richmond, under Acting President Broderick's leadership.

ACTING PRESIDENT'S REPORT

In his report to the Board, Acting President Broderick reviewed recent legislative activities and noted Michelle Obama's visit to campus and the media attention it brought to the University. He reported on the Enrollment Management initiative, chaired by Alice McAdory, which involves over 200 individuals serving on various committees charged with examining the key elements of an optimal enrollment management plan.

Acting President Broderick reported that the freshman retention rate is approaching 80% for the fall 2007 class. He attributed this to the good work of Charles Wilson, Dean of University College, and his staff. Preparation is also underway in Academic Affairs for the upcoming SACS reaccreditation process and the update to the University's Strategic Plan. General Education revisions are in the final stages.

Old Dominion University's bond rating has been upgraded by Standard & Poor's from "A" to "A+". The upgrade acknowledged the substantial increase in debt-supported projects, however, the University hit or exceeded key enrollment and financial benchmarks. This speaks well of Board governance and the operation of the institution.

As of June 30, Old Dominion's endowment was valued at over \$182 million. Based on preliminary analysis, this performance will place the fund in the top quartile of all funds reporting to the National Association of College and University Business Officers' annual survey of over 700 funds nationwide. Old Dominion's is well diversified and is also outperforming its own benchmarks.

The Office of Human Resources has developed a Quality of Worklife Survey for the campus community. The Board will receive an update on this survey at a future meeting. Human Resources is also developing an AP Faculty Handbook and compensation guidelines, and deferred compensation plan documents. Compliance with employment eligibility & verification (I-9) is underway.

Acting President Broderick shared ODU's research cluster investments for the last two years and reported on the membership organizations of the Virginia Coastal Energy Research Consortium (VCERC), which is headed by ODU and chaired by Patrick Hatcher. Researchers at Old Dominion University have joined with a private construction contractor to develop an algae-growing farm and biodiesel production facilities 20 miles east of Hopewell, aiming to promote Virginia as a leader in alternative-energy and pollution-abatement technology. Governor Kaine

will be among the dignitaries who will participate in a ribbon-cutting ceremony at the facility on Wednesday, September 24.

Student Affairs expanded Week of Welcome (WOW) events to include both curricular and co-curricular activities and experimented with having all residence hall check-ins at the Constant Center in order to cut down on campus traffic congestion and to facilitate a more orderly move-in day. Planning is underway for a smooth transition for the 280 students housed at the Sheraton Waterside to Scotland House when it opens on the 24th.

Upcoming events include the Algae Farm opening on September 24, the President's Lecture Series featuring Frank DeFord on September 25, the Commonwealth Homeland Security Foundation Luncheon with Mark Warner on September 29, the Founders' Day Luncheon on October 10, and Fall Commencement on December 13.

Acting President Broderick shared some of his personal activities, including the presidential blog on ODU's website, teaching a web-based class (ELS 610), a CASE presentation in New York City, and his efforts to communicate with the campus through electronic "Dear Colleagues" letters. He noted that greater communication leads to less misunderstanding.

At the conclusion of his remarks, Acting President Broderick shared the new 2-minute promotional video, "Modern Minds." He thanked Rector Jacobson for his leadership over the past two years.

APPROVAL OF NEW BOARD POLICY ON FIREARMS, WEAPONS, AND CERTAIN RELATED DEVICES

Associate General Counsel Jay Wright introduced the following resolution, noting that it is required as the result of a Supreme Court decision which prohibits the outright ban of firearms on campus. In response to a question, he noted that this applies only to property in Virginia owned or controlled by the University. A motion was made by Mr. Hall to approve the resolution. The motion was seconded by Admiral Gehman and approved unanimously by all members present and voting (*Ampy, Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

RESOLUTION TO APPROVE NEW BOARD OF VISITORS POLICY, "FIREARMS, WEAPONS, AND CERTAIN RELATED DEVICES"

RESOLVED, that the Board of Visitors approves the new policy, "Firearms, Weapons, and Certain Related Devices," effective immediately.

NUMBER: 1013

TITLE: Firearms, Weapons, and Certain Related Devices

APPROVED: September 19, 2008

In the course of pursuing its mission as an institution of higher education of the Commonwealth of Virginia, Old Dominion University seeks to provide a safe and secure environment for its students, faculty, staff, and all others coming upon the campus. This policy regulates use of privately owned firearms, and prohibits firearms, related devices and weapons on campus to the extent permitted by law.

Application:

This policy applies to the University's students, its employees, volunteers, and invitees. Persons lawfully on campus, other than students, employees, volunteers, and invitees as these terms are defined below, are not subject to this policy other than paragraph 6, which does apply. Additionally, such persons may not carry firearms, related devices, and weapons in campus buildings, to university sports events, entertainments, or educational and cultural functions or events, whether held or conducted indoors or out.

Definitions:

1. "Campus" means any land in Virginia, with or without buildings or structures, owned or leased by the University, or otherwise under its control.
2. "Employee" means any person providing personal services under the direction and control of the University either full or part-time, whatever the basis for compensation may be.
3. "Firearms" means any pistol, rifle, shotgun, or other device designed or intended to propel a bullet, shot, or any other object of any kind as the result of an explosion of any combustible material whether or not the same is actually capable of being fired or discharged. "Firearms" includes pistols permitted to be carried or worn concealed. "Firearms" does not include firearms issued by the University, federal, state, and local agencies, departments, or the armed services, and carried in the performance of duty, or otherwise in accordance with the instructions of the issuing authority.
4. "Invitee" means any person other than an employee coming on campus for a business purpose, or in connection with the performance of a contract with the University. Solely for the purpose of this policy, the term does not include members of the general public including family of students, and alumni and former students of the University.
5. "Related Devices" means realistic replicas of firearms, including such replicas sold or traded as "toys" (other than transparent, brightly colored water guns), paintball guns, BB or pellet rifles and pistols, sling shots, bows and arrows, and crossbows and bolts.

6. "Students" means any person enrolled in one or more credit or non-credit courses or programs.
7. "Volunteer" means a person meeting the criteria of, and selected and supervised according to University Policy 6023, "Guidelines for the Use of Volunteers."
8. "Weapons," means knives (other than knives used for domestic purposes, pen or folding knives with blades less than three inches in length, and box cutters, and utility knives kept or carried for use in accordance with the purpose intended by the original seller), machetes, straight razors, spring sticks, metal knucks, blackjacks; any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; any disc, of whatever configuration having at least two points or pointed blades, which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart.

Policy:

1. Firearms, weapons and related devices may not be carried, maintained or kept anywhere on campus, including in automobiles parked on campus, by employees, students, and volunteers.
2. a. During bow and crossbow hunting seasons, bows and crossbows with arrows and bolts may be stored with the ODU Police Department by students residing on campus, and may be so stored at other times for use in organized competitions. The Department shall accept and store bows and crossbows in accordance with Department procedures. These procedures shall make provision for bow and crossbow storage at all times, and for reasonable access to withdraw them; and,

b. Any student residing on campus having lawful possession of a firearm may store the firearm and ammunition at the ODU Police Department during any hunting season, and at other times for use in organized competitions and at target ranges licensed to do such business. The Department shall accept and store firearms in accordance with Department procedures; provided that such procedures shall make provision for firearms storage at all times, and for reasonable access to withdraw them.
3. For the purpose of the foregoing subparagraphs, bows, crossbows, and firearms shall be brought from their off-campus location directly to the place of storage designated by the Department.
4. Exceptions to this policy may, for good cause shown, be made at the discretion of the President and University police chief. Any such application shall be in writing, and shall state with particularity the exception sought and the reason for same. Additional information may be required of the applicant, and the application and any additional information may be required to be submitted in the form of an affidavit.

5. When firearms are carried on campus as permitted by this policy, they shall be carried with the muzzle angled up or down so as to avoid pointing the firearm at oneself, or any other person. All firearms, including those permitted to be concealed, having a safety shall have the safety in the “on” position. All semi-automatic firearms shall be carried with an empty breech or firing chamber. All revolvers shall be carried with an empty chamber to the immediate left or right of the barrel, depending on whether the cylinder turns clockwise or counterclockwise, and the chamber under the hammer shall be empty as well, unless the revolver is hammerless. All shotguns and other firearms that break to be loaded shall be carried broken and unloaded.
6. Violations of the foregoing policy shall be reported to the appropriate authority within the University for such disciplinary action as may be appropriate under the circumstances, including suspension, dismissal, and termination. Failure to report a violation of this policy may itself result in disciplinary action.

MOTION FOR CLOSED SESSION

The Rector recognized Mr. Hall, who made the following motion, “Mr. Rector, I move that this meeting be recessed, and, as permitted by Virginia Code Section 2.2-3711(A)(1) and (3), we reconvene in closed session for the purpose of discussing personnel matters, specifically, the evaluation of all programs and departments of the University, the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.” The motion was seconded by Mr. Chick and approved unanimously by all members present and voting (*Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

RECONVENE IN OPEN SESSION AND FOIA CERTIFICATION

At the conclusion of the closed session, the meeting reconvened in open session, at which time the Rector called for the Freedom of Information Act certification of compliance that (1) only public business matters lawfully exempted from the open meeting requirements under the Freedom of Information Act were discussed and (2) only such public business matters as were identified in the motion by which the closed session was convened were heard, discussed or considered. The certification of compliance vote was eleven in favor and none opposed (*Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

The Rector recognized Ms. Forehand, who made the following motion, “I move that the Board approve the President’s Plan, as stated in closed session, dealing with state funding retrenchment to be announced by the Governor. The motion was seconded and approved unanimously by all members present and voting (*Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

REPORTS OF STANDING COMMITTEES

AUDIT COMMITTEE

The Rector called on Mr. Stallings for the report of the Audit Committee. Mr. Stallings reported that the Audit Committee heard a report from Mr. Deane Hennett, University Auditor, on the University's recent and on-going compliance efforts and on the activities of the University Auditor's Office. The compliance activities that were covered included the efforts of the University Compliance Committee in forming a University Policies and Procedures group to establish a more formal University policy process, as well as review and update (as necessary) current University policies.

Mr. John Wszelaki, representing the Institute of Internal Auditors' Peer Review process, reported on his recent review of the University's Office of Internal Audit. This Quality Assurance Review followed the Institute's procedure which involved a self-assessment performed by Mr. Hennett and his staff and an independent validation conducted by Mr. Wszelaki. He reported that our Office of Internal Audit complies with the Institute's standard and utilized a number of internal audit best practices. He made several recommendations to the Committee which will be incorporated into Mr. Hennett's Action Plan to be reported on at the December meeting. He also recommended that the Committee draft and adopt a formal Charter which will also be done for consideration at the Committee's next meeting.

After an update on the projects in process within the University Auditor's Office, the Committee received details of the recent departmental audits performed in Human Resources Information Technology (VITA Audit), Computer Science Follow-Up and Registrar Follow-Up in closed session.

INSTITUTIONAL ADVANCEMENT COMMITTEE

The Rector called on Mr. Mugler for the report of the Institutional Advancement Committee. Mr. Mugler reported that Ms. Karen Travis, Assistant Vice President for Institutional Advancement and Director of University Events and Licensing, apprised the committee of the operational structure for Institutional Advancement while John Broderick serves as Acting President. Ms. Travis and Dr. Alice McAdory are assisting Acting President Broderick with the daily operations of Koch Hall and Rollins Hall, respectively. Ms. Travis outlined governmental relations strategy to mitigate the impact of budget reductions on Old Dominion University. Additionally, she reported a record \$10 million in sales of licensed logo merchandise since the creation of the new athletic marks five years ago and provided the committee an overview of upcoming fall events.

Dr. Alice McAdory, Associate Vice President for Enrollment Management, gave an update on the progress of the Strategic Enrollment Management Plan. She talked about reasons for the new initiative and how the plan will be developed. She showed the Enrollment Management Web site, identified the initiative's 13 committees and their composition, and explained the charge issued by the Steering Committee. She also

reported that the campus community will have access to committee minutes and can follow the progress of the planning process on the Web site. She said the campus community has been invigorated by the new initiative.

Ms. Lakeisha Phelps, Acting Director of Admissions, presented information about the fall class of 2008. She reported that the university received the most freshman applications ever for the third consecutive year. This fall, 2790 freshmen are enrolled, with an average 1075 SAT score and 3.3 grade point average. She reported that there has been a decline in the number of transfer, graduate, distance learning and international enrollments due to several factors including the current state of the economy. Ms. Phelps introduced two Old Dominion students. Rachel Sleighter, a PHD student in Chemistry, and Alexander Arain, a freshman wide receiver for ODU's football team, who shared their experiences at the university

Mr. Dick Whalen, Military Activities Director, reviewed major military events planned for the fall semester and highlighted Army and Navy ROTC record enrollments. He also introduced Capt. Michael "Breeze" Barea, USN, as the new commanding officer of the Navy ROTC program, Barea's executive officer, Emil Espiritu (ODU, class of '89), and Capt. Jerry Parchman, USMC, the new Marine officer instructor. Lt. Col. Bill Brown, USA, was reintroduced as the returning commanding officer of the Army Battalion, along with Master Sgt. Richard Burnett.

STUDENT ADVANCEMENT COMMITTEE

The Rector called on Dr. Treherne for the report of the Student Advancement Committee. Dr. Treherne reported that Lesa Clark provided an overview of the Diversity Institute which is designed to have students explore their own personal identities and work to develop the skills necessary to create systems of positive change as they move on through their life. Ms. Clark conducted a communications exercise with the SAC committee members that made them aware of differences in styles and communication patterns that can influence an individual's attitudes and perceptions about diversity issues as an example of some of the developmental changes student participants in the institute will experience.

Deborah White reported that ODU has outsourced their marketing rights in partnership with CBS Collegiate Sports Properties, located in Charlottesville. Their clients are all top colleges and universities, with ODU as the only 1AAschool. The ODU/CBS staff is housed in the Athletic Department. The first intercollegiate rowing competition is October 18. Football scrimmages are scheduled for September 27, October 25 and November 22, this date coinciding with the Homecoming activities. ODU will be hosting CAA tournaments for wrestling in March and tennis in April. John Broderick reported that attendance has increased at sporting events and he believes it is due to upcoming football. The different sporting events are scheduled on the same day and he thinks that has increased attendance. Members of the committee raised several questions about the CBS relationship and its potential implications on the University's development efforts and initiatives.

Dr. Walker-Johnson presented information on the Week of Welcome, a week that included curricular and co-curricular activities for first-year students. She also reported on the Housing check-in process that was located at The Ted in an attempt to make the moving in process more efficient. Student volunteers assisted move-in at each of the residence halls. This procedure worked well and will continue to be used.

The newest residence hall, Scotland House, will be ready for occupancy next week by approximately 260 students who have been housed temporarily at the Sheraton Waterside and commuted via shuttles to and from campus. These students have been housed on each floor of the Sheraton with the same students they will be living with in the Scotland House. Dr. Walker-Johnson plans to take cookies to the students when they move in next week and thank them for their patience. ODU administrators began communicating with parents and students in July about the possibility that Scotland House may not be completed for the beginning of the semester. Parents and students have been able to view the progress of the Scotland House construction on the University's website.

ACADEMIC AND RESEARCH ADVANCEMENT COMMITTEE

The Rector called on Mr. Ampy for the report of the Academic and Research Advancement Committee. Mr. Ampy stated that the Committee met in closed session to discuss a recommendation for an honorary degree, the appointment of two faculty members with tenure, and the appointment of faculty representatives to Board of Visitors' committees.

Committee members approved by unanimous vote the award of an honorary degree to Anne Donovan. The following resolution was brought forth as a recommendation of the Academic and Research Advancement Committee and was approved unanimously by all members present and voting (*Ampy, Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

HONORARY DEGREE NOMINATION

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the awarding of an honorary degree to the individual noted below. A summary of the nominee's career is included in the Academic & Research Advancement Committee agenda.

Anne Theresa Donovan, Head Coach of the U.S. Women's Basketball Olympic Team
Doctor of Humane Letters (*honoris causa*)

Committee members approved by unanimous vote the appointment of two faculty members with tenure. The following resolutions were brought forth as recommendations of the Academic and Research Advancement Committee and were approved unanimously

by all members present and voting (*Ampy, Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne.*

APPOINTMENT OF FACULTY MEMBER WITH TENURE

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Dr. Richard Heller with the award of tenure in the Department of Medical Laboratory and Radiation Sciences, effective July 25, 2008. A copy of his curriculum vitae is enclosed in the Academic and Research Advancement agenda.

Salary: \$143,100 for 12 months
Rank: Professor of Medical Laboratory and Radiation Sciences

APPOINTMENT OF FACULTY MEMBER WITH TENURE

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Dr. Cynthia L. Tomovic as Professor of Occupational and Technical Studies and the award of tenure in the Department of Occupational and Technical Studies, effective July 25, 2008. A copy of her Statement of Leadership Philosophy, Educational, Academic and Administrative Experiences, which summarizes her curriculum vitae, is enclosed in the Academic and Research Advancement agenda.

Salary: \$95,000 for 10 months
Rank: Professor of Occupational and Technical Studies

The Committee approved by unanimous vote the appointment of faculty members to Board of Visitors' committees. The following resolution was brought forth as a recommendation of the Academic and Research Advancement Committee and was approved unanimously by all members present and voting (*Ampy, Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne.*

**APPROVAL OF FACULTY REPRESENTATIVES TO
BOARD OF VISITORS' COMMITTEES**

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the following faculty representatives to Board of Visitors' committees for the 2008-09 academic year, effective September 19, 2008: Academic and Research Advancement, Kurt Gaubatz; Administration and Finance, Ken Daley; Institutional Advancement, James English; and Student Advancement, Stacie Raymer.

The Committee approved by unanimous vote the resolutions on 51 faculty appointments and 38 administrative appointments. The following resolutions were brought forth as recommendations of the Academic and Research Advancement Committee and were approved unanimously by all members present and voting (*Ampy, Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

FACULTY APPOINTMENTS

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the following faculty appointments.

<u>Name and Rank</u>	<u>Salary</u>	<u>Effective Date</u>	<u>Term</u>
Dr. Tim Anderson Assistant Professor of Communication and Theatre Arts (Tenure Track)	\$52,000	7/25/08	10 mos

Dr. Anderson received a Ph.D. and an M.A. from the Department of Radio/Television/ Film, in 1998 and 1993 respectively, from Northwestern University and a B.A. in Philosophy in 1987 from the University of Arizona. Since 2007, he has been a Visiting Faculty member in the Department of Telecommunications at Indiana University-Bloomington. Prior to that, Dr. Anderson was an Assistant Professor in the Department of Communication at Denison University.

Dr. Gnana K. Bharathy Assistant Professor of Engineering Management and Systems Engineering (Tenure Track)	\$72,000	7/25/08	10 mos
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Dr. Bharathy received a Ph.D. and an M.S. in Systems Engineering, in 2006 and 2001 respectively, from the University of Pennsylvania, a Master of Engineering from the University of Canterbury, New Zealand in 1996 and a Bachelor of Technology from the National Institute of Technology, India in 1992. Since 2007, he has been Project Manager at Ackoff Collaboratory for Advancement of Systems Approaches at the University of Pennsylvania. Prior to that, Dr. Bharathy was a Senior Analyst at Decision Strategies International and a Post-doctoral Fellow at Ackoff Collaboratory.

Ms. Jonna Linkous Bobzien Lecturer of Early Childhood, Speech Language Pathology and Special Education	\$47,457	7/25/08	10 mos
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Ms. Bobzien received an M.S.Ed. in Special Education and a B.S. in Biology, in 2003 and 1996 respectively, from Old Dominion University and is pursuing a Ph.D. in Special Education from Old Dominion University. Since 2006, she has been a Graduate Teaching Assistant in the Darden College of Education at Old Dominion University. Ms. Bobzien has also been a lead teacher at St. Mary's Home from Disabled Children.

<u>Name and Rank</u>	<u>Salary</u>	<u>Effective Date</u>	<u>Term</u>
Dr. Leon F. Bouvier Visiting Professor of Sociology and Criminal Justice	\$50,000	7/25/08	10 mos

Dr. Bouvier received a Ph.D. and M.A. in Sociology in 1971 and 1963 from Brown University and a B.S. in Sociology/History in 1961 from Spring Hill College. Since 2004, he has been an Adjunct Professor at Old Dominion University.

Mr. Christopher M. Boyle Instructor of Computer Science	\$41,600	8/25/08	10 mos
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Mr. Boyle received an M.S. in Information Technology in 2007 from Virginia Tech and a B.S. in Computer Engineering in 2004 from Old Dominion University. Since 2004, he has been an Associate Professor of Information Technology at Tidewater Community College.

Ms. Melissa Bristow Lecturer of Philosophy and Religious Studies	\$40,000	7/25/08	10 mos
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Ms. Bristow received an M.A. in Humanities and a B.A. in Philosophy, in 2004 and 2001 respectively, from Old Dominion University. Since 2004, she has been an Adjunct Faculty member at Old Dominion University, Tidewater Community College and Saint Leo University.

Ms. Christina Campbell-Westmont Instructor of History	\$40,000	7/25/08	10 mos
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Ms. Campbell-Westmont received an M.A. in History in 2000 from Old Dominion University and a B.A. in History/International Studies in 1992 from Westminster College. Since 2003, she has been an Adjunct Faculty member at Old Dominion University.

Dr. Mecit Cetin Assistant Professor of Civil and Environmental Engineering (Tenure Track)	\$77,185	7/25/08	10 mos
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Dr. Cetin received a Ph.D. in Transportation Engineering and an M.S. in Civil Engineering, in 2002 and 1999 respectively, from Rensselaer Polytechnic Institute and a B.S. in Civil Engineering in 1995 from Bogazici University, Turkey. Since 2004, he has been an Assistant Professor in the Department of Civil and Environmental Engineering at the University of South Carolina. Prior to that, Dr. Cetin was a Postdoctoral Research Associate and Instructor in the Department of Civil and Environmental Engineering at Rensselaer Polytechnic Institute.

<u>Name and Rank</u>	<u>Salary</u>	<u>Effective Date</u>	<u>Term</u>
Mr. George Chackman Instructor of Mathematics and Statistics	\$32,386	7/25/08	10 mos

Mr. Chackman received an M.S. in Applied Mathematics and a B.S. in Electrical Engineering, in 1998 and 1991 respectively, from Old Dominion University and has completed his coursework for a Ph.D. Since 2002, he has been an Adjunct Professor and Instructor in the Department of Mathematics and Statistics at Old Dominion University.

Ms. Christine Marie Charlton Instructor of Early Childhood, Speech Language Pathology and Special Education (Child Development Center)	\$39,000	8/10/08	10.5 mos
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Ms. Charlton received an M.S. in Education in 2008 from Old Dominion University and a B.S. in Interdisciplinary Social Science at James Madison University in 2005. In 2008, she has been a Preschool I Substitute Teacher in the Child Development Center at Old Dominion University and a Long-Term Substitute at Landstown Elementary School. Prior to that, Ms. Charlton was a Graduate Assistant at Old Dominion.

Dr. Andrew James Collins Research Assistant Professor, Virginia Modeling, Analysis & Simulation Center	\$55,000	7/25/08	12 mos
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Dr. Collins received a Ph.D. in Management Sciences and an M.Sc. in Operational Research, in 2008 and 2001 respectively, from the University of Southampton, UK and a B.A. in Mathematical Sciences in 1999 from the University of Oxford, UK. He has taught as a Lecturer in the United Kingdom since 2005.

Dr. Joseph R. Davis Visiting Assistant Professor of Educational Leadership and Counseling	\$19,000	7/25/08	5 mos
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Dr. Davis received a Doctor of Education and a Master of Education, in 1977 and 1969 respectively, from the College of William and Mary and a B.A. in Chemistry and Mathematics in 1965 from East Carolina University. Since 2002, he has been an Adjunct Assistant Professor at Old Dominion University. From 2005-2007, Dr. Davis was an Academic Advisor for the Troops-To-Teachers program at Old Dominion University.

Ms. Rebecca Randolph Deal Lecturer of Nursing	\$60,000	7/25/08	10 mos
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Ms. Deal received an M.S. in Nursing from Old Dominion University in 2005 and a B.S. in Nursing and B.A. in Religious Studies, in 2003 and 1999 respectively, from the University of Virginia. Since 2007, she has been an Allergy and Immunology Pediatric Nurse Practitioner at Children's Specialty Group at CHKD. Ms. Deal has also been a Pediatric Research Nurse Practitioner at Eastern Virginia Medical School: Department of Pediatrics since 2005.

<u>Name and Rank</u>	<u>Salary</u>	<u>Effective Date</u>	<u>Term</u>
Dr. Declan De Paor Research Professor of Physics	\$72,000	7/25/08	10 mos

Dr. De Paor received a Ph.D. and an M.Sc. in Geology, in 1981 and 1976 respectively, from National University of Ireland, Cork and a B.Sc. in Geology in 1973 from the National University of Ireland, Dublin. Since 2005, he has been a Research Professor in the Department of Physics at Worcester Polytechnic Institute. Prior to that, Dr. De Paor was a Research Professor and Director of Field Studies in the Department of Earth Sciences at Boston University.

Mr. Robert Del Corso Lecturer of History	\$40,000	7/25/08	10 mos
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Mr. Del Corso received a Master of Religious Education in 1994 from Loyola University, Institute of Ministry, a Master of Arts in National Security Affairs in 1982 from the Naval Postgraduate School and a Bachelor of Arts in History in 1971 from John Carroll University. Since 1998, he has been teaching in the Department of History at Old Dominion University.

Ms. Mina Estrada Lecturer of Communication and Theatre Arts	\$40,000	7/25/08	10 mos
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Ms. Estrada received an M.F.A. in Dance in 2005 from Temple University and a Bachelor of Exercise and Sports Science with a major in Dance in 1995 from Texas Woman's University. Since 2008, she has been Associate Artistic Director at TRDance Ensemble. Ms. Estrada has also been an Adjunct Dance Faculty member at Old Dominion University and Christopher Newport University.

Dr. Barry C. Ezell Research Assistant Professor, Virginia Modeling, Analysis & Simulation Center	\$125,000	9/25/08	12 mos
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Dr. Ezell received a Ph.D. in Engineering Management in 2004 from Old Dominion University, an M.S. in Systems Engineering in 1998 from the University of Virginia and a B.S. in Mechanical Engineering Technology in 1988 from the University of Southern Mississippi. Since 2006, he has been a Technical Expert for the Department of Homeland Security. Dr. Ezell is also the Lead Planner for the Future Combat Systems Integrated Analysis Planning Team, Training and Doctrine Command (TRADOC), Fort Monroe.

Dr. Rodney L. Evans Lecturer of Philosophy and Religious Studies	\$47,000	7/25/08	10 mos
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Dr. Evans received a Ph.D. and an M.A., in 1987 and 1981 respectively, from the University of Virginia and a B.A. in Philosophy in 1978 from Old Dominion University. Since 1989 he has been an Adjunct Assistant Professor of Philosophy and a Visiting Assistant Professor of Philosophy at Old Dominion University.

<u>Name and Rank</u>	<u>Salary</u>	<u>Effective Date</u>	<u>Term</u>
Dr. Mohammed Matin Ferdjallah Research Assistant Professor, Virginia Modeling, Analysis & Simulation Center	\$105,000	8/25/08	10 mos

Dr. Ferdjallah received a Ph.D. in Electrical and Computer Engineering and an M.S. in Biomedical Engineering, in 1994 and 1988 respectively, from the University of Texas, and a B.S. in Electrical Engineering in 1986 from the College Polytechnic Algiers (ENPA). Since 2006, he has been a Visiting Scholar at the Biotechnology Center at Marshall University and an Adjunct Assistant Professor at the Medical College of Wisconsin. Dr. Ferdjallah was also an Assistant Professor of Electrical and Computer Engineering at the University of Tennessee.

Dr. Jennifer Georgen Assistant Professor of Ocean, Earth and Atmospheric Sciences (Tenure Track)	\$70,000	7/25/08	10 mos
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Dr. Georgen received a Ph.D. in Marine Geophysics in 2001 from Massachusetts Institute of Technology/Woods Hole Oceanographic Institution Joint Program in Oceanography and a B.A. in Environmental Sciences in 1995 from the University of Virginia. Since 2004, she has been an Assistant Professor in the Department of Geological Sciences at Florida State University.

Ms. Farideh Goldin Visiting Assistant Professor of English	\$40,800	7/25/08	10 mos
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Ms. Goldin received an M.F.A. in Creative Writing and an M.A. in Humanities, in 2002 and 1995 respectively, from Old Dominion University and a B.A. in English Literature in 1975 from Old Dominion University and Pahlavi University. For the past seven years, she has been a professional writer and lecturer.

Ms. Elizabeth Ashley Hall Lecturer of Communication and Theatre Arts	\$37,500	7/25/08	10 mos
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Ms. Hall received an M.A. and a B.A., in 2005 and 2001 respectively, from Old Dominion University. Since 2006, she has been a Product Developer at the The Virginian-Pilot Newspaper/Landmark Communications and has held positions as Business Analyst, Sales Support Team Leader, and Sales Coordinator. (Joint appointment with the Department of English)

Ms. Janice Hawkins Lecturer of Nursing	\$51,000	7/25/08	10 mos
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Ms. Hawkins received an M.S.N. in 1995 from the Medical University of South Carolina and a B.S.N. in 1989 from the University of South Carolina. Since 2001, she has been an Adjunct Faculty member in the School of Nursing at Old Dominion University and an Instructor at Tidewater Community Life Support.

<u>Name and Rank</u>	<u>Salary</u>	<u>Effective Date</u>	<u>Term</u>
Ms. Carline Jean-Gilles Lecturer of Nursing	\$63,000	7/25/08	10 mos

Ms. Jean-Gilles received an M.S. in Community Health and a Family Nurse Practitioner Certificate in 1997 from the University of Virginia, a B.S. in Nursing in 1993 from Florida International University, and is in the Ph.D. program in Risk and Resilience at Virginia Commonwealth University. Since 2007, she has been an HIV Education Consultant for the National Minority AIDS Education and Training Center. Ms. Jean-Gilles is also a Nurse Consultant for Paramount Youth Services and an Adjunct Faculty member in Community Health at Virginia Commonwealth University, School of Nursing.

Dr. Rodney Johns Lecturer of Dental Hygiene	\$80,000	7/25/08	10 mos
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Dr. Johns received a D.D.S. from the School of Dentistry at the University of Louisville and an Advanced Education in General Dentistry postdoctoral certificate from the Air Force as Chief Resident. He served in the United States Air Force as a Flight commander in Clinical Dentistry in Alabama, Utah, Germany and Turkey, as a general dentist in private practice and as an instructor in the military Red Cross Dental Assistant Program.

Ms. Lynn S. Johnson Lecturer of Management	\$46,500	7/25/08	10 mos
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Ms. Johnson received a Masters in Human Resources Management in 1993 from Marymount University and a B.S. G.H.E. with a concentration in Business Administration in 1977 from the University of Delaware. Since 2006, she has been a Lecturer at Old Dominion University. Prior to that, Ms. Johnson was a Human Resources Supervisor at STIHL Inc.

Dr. Andrea D. Jones Visiting Assistant Professor of Mathematics and Statistics	\$32,386	7/25/08	10 mos
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Dr. Jones received a Ph.D. and an M.S. in Computational and Applied Mathematics, in 2007 and 2006 respectively, from Old Dominion University and a B.S. in Chemical Engineering in 1996 from Virginia Polytechnic Institute and State University. Since 2007, she has been an Adjunct Professor at both Old Dominion University in the Department of Mathematics and Statistics and in the Department of Mathematics and Sciences at Tidewater Community College. She was a Graduate Research Assistant and Graduate Teaching Assistant at Old Dominion University from 2002-2007.

<u>Name and Rank</u>	<u>Salary</u>	<u>Effective Date</u>	<u>Term</u>
Dr. Petros J. Katsioloudis Assistant Professor of Occupational and Technical Studies (Tenure Track)	\$60,000	7/25/08	10 mos

Dr. Katsioloudis received a Doctoral Degree of Education in Technology Education in 2007 from North Carolina State University and a Master's of Education in Technology Education and a B.S. in Science and Technology, in 2004 and 2003 respectively, from California University of PA. Since 2007, he has been an Assistant Professor at Berea College. Prior to that, Dr. Katsioloudis was a Teaching Assistant at North Carolina State University.

Ms. Jacquelyn A. Kavanuagh Lecturer of Nursing	\$120,000	7/25/08	12 mos
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Ms. Kavanaugh received an M.S. in Nursing in 1995 from Old Dominion University and a B.S. in 1980 from St. Joseph's College. She was certified as a Registered Nurse Anesthetist in 1990. Since 2007, she has been a Lecturer of Nursing at Old Dominion University. Since 1990, Ms. Kavanaugh has been Chief Nurse Anesthetist and a Certified Registered Nurse Anesthetist at Atlantic Anesthesia. She served as Acting Program Director for the Nurse Anesthetist program at Old Dominion University in 1997-98.

Dr. Jennifer Kidd Lecturer of Educational Curriculum and Instruction	\$46,250	7/25/08	10 mos
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Dr. Kidd received a Ph.D. in Urban Services and an M.S. in Education, in 2006 and 1999 respectively, from Old Dominion University and a B.A. in Elementary Education in 1992 from the University of Illinois at Chicago. Since 2004, she has been a Research Associate/Teaching Assistant, Adjunct Assistant Professor and Lecturer at Old Dominion University.

Ms. Ann Marie Kopitzke Lecturer of Community and Environmental Health	\$25,000	7/25/08	10 mos
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Ms. Kopitzke received an M.P.A. in 2002 from Old Dominion University and a Bachelor of Business Administration in 1987 from the University of Wisconsin – Milwaukee. She has completed course work for her Ph.D. from Old Dominion University. Since 2003, Ms. Kopitzke has been an Adjunct Faculty member in the College of Health Sciences at Old Dominion University. (Half-time appointment)

<u>Name and Rank</u>	<u>Salary</u>	<u>Effective Date</u>	<u>Term</u>
Mr. Sridharan Krishnaswami Lecturer of Management	\$45,000	7/25/08	10 mos

Mr. Krishnaswami received an M.B.A. in 1967 from the College of William and Mary, a Grad. B.I.M. (London) from the British Institute of Management, and an M.A. in Economics in 1960 from the University of Madras. Since 2003, he has been an Adjunct Faculty member in the College of Business and Public Administration at Old Dominion University and an Associate Professor at Tidewater Community College.

Mr. James H. Lant Lecturer of Management	\$45,000	7/25/08	10 mos
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Mr. Lant received a Master of Public Administration from Old Dominion University in addition to Bachelor and Master degrees in Business Administration and has completed all course work toward a Ph.D. in Urban Services at Old Dominion University. He is currently CEO/Principal of Turtle Bay Management Co., Inc., a consulting firm. Mr. Lant has been a faculty member at Old Dominion University and Christopher Newport University and was an adjunct faculty member at several institutions.

Dr. Maureen G. Elgersman Lee Visiting Associate Professor of History	\$40,000	7/25/08	10 mos
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Dr. Lee received a Doctor of Arts in Humanities and an M.A. in African and African American Studies, in 1997 and 1993 respectively, from Clark Atlanta University and a Bachelor's degree in French in 1991 from Redeemer College. Since 2007, she has been a Visiting Associate Professor of Women's Studies at Old Dominion University. Prior to that, she was an Associate Professor of History at the University of Southern Maine.

Dr. Keejoo Lee Assistant Professor of Aerospace Engineering (Tenure Track)	\$70,000	10/10/08	10 mos
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Dr. Lee received a Ph.D. and an M.S. in Aerospace Engineering, in 2005 and 2001 respectively, from the University of Maryland and a B.S. in Aerospace Engineering in 1999 from Seoul National University. Since 2005, he has been a Principal Investigator at Hexcel Corp. Dr. Lee has also been an Assistant Research Scientist, Research Associate and Research Assistant at the University of Maryland.

<u>Name and Rank</u>	<u>Salary</u>	<u>Effective Date</u>	<u>Term</u>
Dr. Kathleen Levingston Lecturer of Educational Leadership and Counseling	\$40,000	7/25/08	10 mos

Dr. Levingston received a Ph.D. in Counselor Education in 2004 from the University of New Orleans and a Master of Education in Community Counseling and a Bachelor of Arts in Psychology, in 2001 and 1999 respectively, from the University of Louisiana at Monroe. Since 2005, she has been a Clinical Care Supervisor at Zeider's Enterprise, a mental health counselor and a clinical counselor. Dr. Levingston is also an Adjunct Professor in the Darden College of Education at Old Dominion University.

Dr. Anthony J. Lichi Visiting Assistant Professor of Art	\$49,000	7/25/08	10 mos
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Dr. Lichi received a double Ph.D. in Art History and Comparative Literature and an M.A. in Comparative Literature, in 2008 and 2004 respectively, from Indiana University, an M.A. in Humanities in 2001 from the University of Chicago and a B.A. in English Literature in 1999 from Nyack College. Since 2004, he has been a Lecturer in Art History and a Lecturer in Comparative Literature at Indiana University.

Mr. Hutson H. Lindner Lecturer of Mathematics and Statistics	\$42,500	7/25/08	10 mos
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Mr. Lindner received a Master of Science in Education from Old Dominion University and a Bachelor of Science in Mathematics in 1975 from the United States Naval Academy. From 2001-07, he was a faculty member in the Mathematics Department at Old Dominion University. Mr. Lindner was also a Mathematics Instructor at Embry Riddle Aeronautical University.

Dr. Vivian J. Carroll McCollum Visiting Associate Professor of Educational Leadership and Counseling	\$62,000	7/25/08	10 mos
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Dr. McCollum received a Ph.D. in Counselor Education/Marriage and Family Therapy in 1992 from St. Louis University, an M.Ed. in General Counseling in 1976 from the University of Missouri-St. Louis and a B.A. in Foreign Languages in 1971 from Louisiana State University. Since 2005, she has been an Associate Professor of Counselor Education and School Counseling Program Chair at Albany State University.

Dr. Steve P. Myran Assistant Professor of Educational Leadership and Counseling (Tenure Track)	\$55,000	7/25/08	10 mos
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Dr. Myran received a Ph.D. in Education in 2003 from Virginia Commonwealth University, an M.Ed. in 1989 from Lesley College and a B.F.A. in 1986 from the College for Creative Studies. Since 2003, he has been a Research Scientist, Research Associate and Adjunct Professor in the Darden College of Education at Old Dominion University.

<u>Name and Rank</u>	<u>Salary</u>	<u>Effective Date</u>	<u>Term</u>
Mr. Bismarck Myrick Ambassador in Residence and Lecturer of Political Science and History	\$40,000	7/25/08	10 mos

Mr. Myrick received a Master's degree in International Affairs in 1973 from Syracuse University, a Bachelor's degree in History in 1972 from the University of Tampa and has completed all course requirements for the Ph.D. in History at Syracuse University. Since 2002, he has been teaching in the College of Arts and Letters at Old Dominion University. He served previously as US Ambassador to the Republic of Liberia and US Ambassador to the Kingdom of Lesotho.

Dr. Yan Peng Assistant Professor of Mathematics and Statistics (Tenure Track)	\$60,000	7/25/08	10 mos
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Dr. Peng received a Ph.D. in Computational Fluid Dynamics in 2005 from the National University of Singapore and an M.Sc. and B.Eng. in Computational Aerodynamics, in 1999 and 1996 respectively, from Nanjing University of Aeronautics and Astronautics, P.R. China. Since 2006, he has been a Research Assistant Professor in the Department of Mathematics and Statistics at Old Dominion University.

Dr. Shizhi Qian Assistant Professor of Aerospace Engineering (Tenure Track)	\$80,000	7/25/08	10 mos
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Dr. Qian received a Ph.D. in Mechanical Engineering and Applied Mechanics in 2004 from the University of Pennsylvania and a Ph.D. in Engineering in 1998 from Huazhong University of Science and Technology, Wuhan, China. Since 2005, he has been an Assistant Professor in the Department of Mechanical Engineering at the University of Nevada Las Vegas.

Dr. Peter N. Sedwick Associate Professor of Ocean, Earth and Atmospheric Sciences (Tenure Track)	\$84,000	12/25/08	10 mos
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Dr. Sedwick received a Ph.D. in Chemical Oceanography and a B.S. in Chemistry, in 1991 and 1983 respectively, from the University of Hawaii at Manoa. Since 2001, he has been an Associate Research Scientist at Bermuda Institute of Ocean Sciences.

<u>Name and Rank</u>	<u>Salary</u>	<u>Effective Date</u>	<u>Term</u>
Ms. Jody C. Sommerfeldt Lecturer of Educational Curriculum and Instruction	\$46,250	7/25/08	10 mos

Ms. Sommerfeldt received an M.S.Ed. in Curriculum and Instruction in 1998 from Old Dominion University and a B.S. in Psychology and Elementary Education in 1994 from the College of William and Mary. She is pursuing an Ed.S. in Educational Leadership and Supervision at Old Dominion University. Since 2001, she has been an Instructional Technology Resource Teacher, K-5 at Creekside Elementary School and Southwestern Elementary School and a Technology Curriculum Integration Specialist, K-5 at Newsome Park Magnet School.

Mr. Christopher Spiel Lecturer of Communication and Theatre Arts	\$40,000	7/25/08	10 mos
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Mr. Spiel received an M.F.A. in Drama in 1982 from the University of Arizona and a B.F.A. in Theatre Arts in 1978 from Stephens College. Since 2005, he has been an Assistant Professor at Christopher Newport University.

Dr. Carroll Starling Lecturer of Educational Curriculum and Instruction	\$50,000	7/25/08	10 mos
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Dr. Starling received a Ph.D. in Urban Services and an M.S.Ed. in Middle and Secondary School Education, in 1999 and 1994 respectively, from Old Dominion University and an A.B. in History in 1962 from Duke University. From 2002-07, he was a Social Studies Teacher at King's Fork High School. Dr. Starling is also an Adjunct Assistant Professor in the Department of Educational Curriculum and Instruction at Old Dominion University.

Dr. Mariana Szklo-Coxe Assistant Professor of Community and Environmental Health (Tenure Track)	\$65,000	7/25/08	10 mos
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Dr. Szklo-Coxe received a Ph.D. and M.H.S. in Health Education and Health Promotion/Communication, in 2001 and 1993 respectively, from the Johns Hopkins University and a B.A. in International Relations in 1991 from Brown University. Since 2002, she has been an Associate Scientist in the Department of Population Health Sciences at the University of Wisconsin School of Medicine and Public Health.

Dr. Suzan K. Thompson Research Associate Professor of Educational Leadership and Counseling	\$56,800	7/25/08	10 mos
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Dr. Thompson received a Ph.D. and an M.Ed. in Counselor Education and a B.A. in Psychology, in 1995, 1986 and 1983 respectively, from the University of Virginia. Since 2005, she has been a Visiting Assistant Professor in the Department of Educational Leadership and Counseling at Old Dominion University.

<u>Name and Rank</u>	<u>Salary</u>	<u>Effective Date</u>	<u>Term</u>
Mr. David L. Walker Lecturer of Music	\$40,000	7/25/08	10 mos

Mr. Walker received an M.M. in Percussion Performance in 1995 from the University of Michigan School of Music and a B.M. in Percussion Performance in 1992 from Wheaton Conservatory of Music. Since 1998, he has been an Adjunct Professor in the Music Department at Old Dominion University.

Dr. Mitchell R. Williams Assistant Professor of Educational Leadership and Counseling (Tenure Track)	\$58,000	7/25/08	10 mos
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Dr. Williams received an Ed. D. in Adult and Community College Education in 2001 from North Carolina State University, an M.A.Ed. in Educational Administration in 1998 from Western Carolina University, an M.A. in Political Science in 1980 from Georgetown University and a B.A. in Government in 1978 from Hamilton College. Since 2004, he has been an Assistant Professor in the Department of Educational Leadership and Foundations at Western Carolina University.

**APPOINTMENT OF ASSISTANT DIRECTOR OF INTRAMURAL
AND EXTRAMURAL PROGRAMMING**

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Brandon M. Adams as Assistant Director of Intramural and Extramural Programming, Office of Recreational Sports, effective August 25, 2008.

Mr. Adams received an M.S.Ed. in Sports Management in 2008 from Old Dominion University and a B.S. in Physical Education-Sports Pedagogy in 2005 from Grand Valley State University. Since 2006, he has been a Graduate Assistant and Facilities Intern at Old Dominion University.

Salary: \$32,000 for 12 months
Rank: Assistant Director of Intramural and Extramural Programming and Instructor

APPOINTMENT OF RESIDENCE HALL DIRECTOR

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Hazael Andrew as Residence Hall Director, effective August 11, 2008.

Mr. Andrew received an M.B.A. in 2008 from Mississippi State University and a B.S. in Banking and Finance and a B.S. in Managerial Economics in 2007 from Fayetteville State University. Since 2007, he has been Residence Director at Mississippi State University. Prior to that, Mr. Andrew was a Supplemental Instructor at Fayetteville State University.

Salary: \$30,000 for 12 months
Rank: Residence Hall Director and Instructor

APPOINTMENT OF CHIEF FINANCIAL OFFICER
FOUNDATIONS

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Kelvin Arthur as Chief Financial Officer - Foundations, effective August 25, 2008.

Mr. Arthur received a B.S. in Accounting in 1985 from Old Dominion University and became a Certified Public Accountant in 1998. Since 2005, he has been Deputy Director, Finance & Operations/Chief Financial Officer for Culture & Heritage Museums.

Salary: \$95,000 for 12 months
Rank: Chief Financial Officer – Foundations and Assistant Instructor

APPOINTMENT OF DIRECTOR OF STUDY ABROAD

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Steven D. Bell as Director of Study Abroad, Office of International Programs, effective August 25, 2008.

Mr. Bell received a Master in International and Intercultural Administration in 1992 from the School for International Training and a B.A. in Political Science and English in 1986 from St. Olaf College. Since 1996, he has held several positions at the University of Texas at Austin including Senior Program Coordinator for International Program Development, Global Programs Manager in the Study Abroad Office, and International Exchange Coordinator and Special Programs Coordinator in the International Office.

Salary: \$63,000 for 12 months
Rank: Director of Study Abroad and Instructor

APPOINTMENT OF ATHLETIC ACADEMIC ADVISOR

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Erik Bennett as Athletic Academic Advisor, Office of Athletics, effective July 10, 2008.

Mr. Bennett received an M.A. in Secondary Education and a B.A. in Communication Studies, in 2007 and 2004 respectively, from West Virginia University. Since 2007, he has been an Academic Advisor at West Virginia University.

Salary: \$37,000 for 12 months
Rank: Athletic Academic Advisor and Instructor

**APPOINTMENT OF ASSOCIATE DIRECTOR OF
STUDENT DEVELOPMENT AND ENGAGEMENT**

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Ms. Vickie S. Bonner as Associate Director of Student Development and Engagement, Division of Student Affairs, effective August 1, 2008.

Ms. Bonner received an M.Ed. in Community Counseling and a B.A. in Individual and Family Studies, in 1998 and 1995 respectively, from Kent State University. Since 2004, she has been Associate Director of Residence Life in the Office of Student Housing at Old Dominion University.

Salary: \$58,000 for 12 months
Rank: Associate Director of Student Development and Engagement and Instructor

APPOINTMENT OF ADMISSIONS COUNSELOR

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Douglas P. Brady as Admissions Counselor, effective July 10, 2008.

Mr. Brady received a B.S. in Sports Management in 2008 from Old Dominion University. Since 2007, he has been a Coach at Kempsville High School in Virginia Beach Public Schools. Mr. Brady has been a student worker in Admissions serving as a tour guide and in Athletic Support at Old Dominion University.

Salary: \$30,000 for 12 months
Rank: Admissions Counselor and Assistant Instructor

APPOINTMENT OF ASSISTANT WOMEN’S BASKETBALL COACH

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Ms. Celeste Hill-Brockett as Assistant Women’s Basketball Coach, effective June 2, 2008.

Ms. Hill-Brockett received a B.S. in Human Services Counseling in 1994 from Old Dominion University and is pursuing a Master of Arts in Teaching at Northern Kentucky University. Since 2004, she has been Head Girl’s Basketball Coach and Middle School Mathematics Teacher at Holmes High School in Kentucky. Ms. Hill-Brockett served as Assistant Coach for Women’s Basketball at Old Dominion University from 1998-2000.

Salary: \$70,000 for 12 months
Rank: Assistant Women’s Basketball Coach and Assistant Instructor

APPOINTMENT OF DIRECTOR OF PUBLIC SAFETY/CHIEF OF POLICE

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Rudolph L. Burwell as Director of Public Safety/Chief of Police, effective August 10, 2008.

Mr. Burwell received a B.A. in Criminal Justice in 1982 from Saint Leo University and has over 30 years experience in law enforcement. He holds several professional certifications, which include emergency planning and operations, and is a graduate of the FBI National Academy. Since 2003, he has been the Assistant Chief of Police at Old Dominion University.

Salary: \$100,000 for 12 months
Rank: Director of Public Safety/Chief of Police and Assistant Instructor

APPOINTMENT OF ASSISTANT DIRECTOR OF RECRUITMENT

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Ms. N. Lynn Busby as Assistant Director of Recruitment, Office of Admissions, effective July 15, 2008.

Ms. Busby received a B.A. in Spanish/Government in 2002 from Wofford College. Since 2007, she has been Director of Sports Information at Cabrini College. Ms. Busby has also been Assistant Director of Athletic Public Relations at both Eastern Kentucky University and the University of Richmond.

Salary: \$40,040 for 12 months
Rank: Assistant Director of Recruitment and Assistant Instructor

APPOINTMENT OF RESIDENCE HALL DIRECTOR

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Charles E. Crawford, Jr. as Residence Hall Director, Office of Housing and Residence Life, effective July 31, 2008.

Mr. Crawford received a Masters in Organizational Leadership in 2008 from Southern New Hampshire University and a Bachelor's in Criminal Justice in 2006 from Franklin Pierce University. Since 2006, he has been a Student Life Graduate Assistant at Southern New Hampshire University.

Salary: \$28,000 for 12 months
Rank: Residence Hall Director and Instructor

APPOINTMENT OF RESIDENCE HALL DIRECTOR

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Thomas D. Cullinan as Residence Hall Director, Office of Housing and Residence Life, effective August 4, 2008.

Mr. Cullinan received an M.Ed. in College Student Personnel and a B.S. in Psychology from The University of Southern Mississippi. Since 2006, he has been Coordinator of Fraternity Housing at the University of Southern Mississippi.

Salary: \$32,000 for 12 months
Rank: Residence Hall Director and Instructor

APPOINTMENT OF CONTINUING EDUCATION DIRECTOR
PROFESSIONAL DEVELOPMENT CENTER

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Ms. Clair M. Dorsey as Continuing Education Director of the Professional Development Center in the College of Engineering and Technology, effective June 25, 2008.

Ms. Dorsey received a B.S. in Chemistry from the University of Georgia and has taken graduate coursework in Engineering Management at Old Dominion University. Since 2005, she has been Marketing Manager at Teledyne Hastings Instruments. Ms. Dorsey held several positions in the College of Engineering and Technology from 2000-05 and also served as Director of the Technology Applications Center from 1994-98.

Salary: \$70,000 for 12 months
Rank: Continuing Education Director, Professional Development Center, and Assistant Instructor

APPOINTMENT OF FACILITIES MANAGER

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Terence P. Durkin as Facilities Manager for the Office of Housing and Residence Life, effective August 1, 2008.

Mr. Durkin received a B.S. in Business Administration in 1982 from Old Dominion University. Since 2005, he has been Associate Director of Operations for the Office of Student Housing at Old Dominion University.

Salary: \$60,000 for 12 months
Rank: Facilities Manager and Assistant Instructor

APPOINTMENT OF NURSE PRACTITIONER

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Ms. Kasaundra N. Ewing as Nurse Practitioner, effective September 10, 2008.

Ms. Ewing received an M.S. in Family Nurse Practitioner in 2005 from Hampton University and a B.S. in Nursing in 1994 from Niagara University. Since 2007, she has been a Family Nurse Practitioner at Sentara Life Care Medical Associates. Prior to that, Ms. Ewing was a Clinical Instructor in the School of Nursing at Norfolk State University.

Salary: \$60,000 for 11 months
Rank: Nurse Practitioner and Instructor

APPOINTMENT OF SENIOR ENROLLMENT MANAGEMENT ANALYST

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Dr. Xia (Sophy) Feng as Senior Enrollment Analyst, Office of Institutional Research and Assessment, effective August 10, 2008.

Dr. Xia (Sophy) Feng received a Ph.D. in Applied Economics and Public Policy in 2008 from the University of Illinois at Urbana-Champaign, an M.A. in Economics in 2000 from South

China Normal University and a B.A. in International Finance in 1997 from Central South University of Technology. Since 2003, she has been a Research Assistant at the University of Illinois at Urbana-Champaign.

Salary: \$56,000 for 12 months
Rank: Senior Enrollment Management Analyst and Assistant Professor

APPOINTMENT OF HEAD OF ACCESS SERVICES
PERRY LIBRARY

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Stuart L. Frazer as Head of Access Services in the Perry Library, effective July 25, 2008.

Mr. Frazer received an M.A. in Humanities in 2005 from Old Dominion University, a Master's in Library Service in 1989 from Rutgers University, and a B.A. in Sociology in 1984 from Tulane University. Since 2003, he has been Interlibrary Loan Librarian at Old Dominion University and has served as Acting Head of Access Services since 2007.

Salary: \$67,000 for 12 months
Rank: Head, Access Services and Librarian III

APPOINTMENT OF ASSISTANT ROWING COACH

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Dan J. Garbutt as Assistant Rowing Coach, effective July 25, 2008.

Mr. Garbutt received an A.B. in History in 2001 from Princeton University. Since 2006, he has been a Senior Specialist in the Centralized Business Review Unit at Merrill Lynch. Mr. Garbutt was also an Assistant Rowing Coach at Northeastern University and Mainland Regional High School.

Salary: \$38,000 for 12 months
Rank: Assistant Rowing Coach and Assistant Instructor

APPOINTMENT OF ADMISSIONS COUNSELOR

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Ms. Mallory Griffith as Admissions Counselor, effective August 10, 2008.

Ms. Griffith received a B.S. in Media Arts and Design in 2007 from James Madison University. Since 2005, she has been Director of Training at Carino's Italian Grill. Prior to that, she was a Hall Director for the Office of Residence Life at James Madison University.

Salary: \$30,000 for 12 months
Rank: Admissions Counselor and Assistant Instructor

APPOINTMENT OF DIRECTOR OF WOMEN'S BASKETBALL OPERATIONS

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Ms. Allison D. Halsey as Director of Women's Basketball Operations, effective June 10, 2008.

Ms. Halsey received a B.A. in Business in 2002 from Saint Anselm College. Since 2003, she has been Project Coordinator and then Associate Project Director at Fallon Medica, LLC.

Salary: \$37,000 for 12 months
Rank: Director of Women's Basketball Operations and Assistant Instructor

APPOINTMENT OF ASSISTANT SAILING COACH

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Charles Higgins as Assistant Sailing Coach, effective July 25, 2008.

Mr. Higgins received a B.S.B.A. in Management in 2007 from Old Dominion University and is pursuing a Master of Science in Transportation Management from the State University of New York, Maritime College. Since 2007, he has been Assistant Director of Intercollegiate Sailing at the U.S. Merchant Marine Academy.

Salary: \$28,000 for 12 months
Rank: Assistant Sailing Coach and Assistant Instructor

APPOINTMENT OF DIRECTOR OF MEN’S BASKETBALL OPERATIONS

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Joel M. Hines as Director of Men’s Basketball Operations, effective July 25, 2008.

Mr. Hines received a B.S. in Sport Management in 2005 from Old Dominion University. Since 2007, he was Head Basketball Coach at Kecoughtan High School. Prior to that, Mr. Hines was an Assistant Basketball Coach at TC Williams.

Salary: \$32,000 for 12 months
Rank: Director of Men’s Basketball Operations and Assistant Instructor

APPOINTMENT OF RESIDENCE HALL DIRECTOR

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Ms. Atiya Jackson as Residence Hall Director, effective June 25, 2008.

Ms. Jackson received a Master of Science in Urban Studies and a B.A. in History, in 2007 and 2005 respectively, from Southern Connecticut State University. Since 2007, she has been Assistant to the Director of Housing and Residence Life and Hall Director at Eastern Connecticut State University.

Salary: \$32,000 for 12 months
Rank: Residence Hall Director and Instructor

**APPOINTMENT OF DIRECTOR OF OUTREACH
OFFICE OF ALUMNI RELATIONS**

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Michael N. Kaplan as Director of Outreach, Office of Alumni Relations, effective July 14, 2008.

Mr. Kaplan received an M.P.A. in 2001 from Virginia Commonwealth University and a B.A. in Philosophy and Religious Studies in 1995 from Colby College. He expects to complete an Ed.D. in Educational Policy, Planning and Leadership at the College of William and Mary in 2008. Since 2002, Mr. Kaplan has been Assistant Dean of Admissions at the College of William and Mary.

Salary: \$45,000 for 12 months
Rank: Director of Outreach, Office of Alumni Relations and Instructor

APPOINTMENT OF ADMISSIONS COUNSELOR

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Arthur B. Kelly as Admissions Counselor, effective July 10, 2008.

Mr. Kelly received a B.S. in Communications in 2007 from Old Dominion University. Since 2004, he has been a Circulation Desk Assistant, Assistant to the Director of Admissions and an Admissions Counselor Liaison at Old Dominion University.

Salary: \$30,000 for 12 months
Rank: Admissions Counselor and Assistant Instructor

**APPOINTMENT OF GENERAL COUNSEL
AND SPECIAL ASSISTANT ATTORNEY GENERAL**

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Patrick B. Kelly as General Counsel and Special Assistant Attorney General, effective September 1, 2008.

Mr. Kelly received a J.D. from Wayne State University Law School and a B.A. in Political Science from Michigan State University. He has been General Counsel at Norfolk State University, Senior Assistant General Counsel at the University of Virginia, General Counsel at Old Dominion University, and Associate General Counsel at Virginia Commonwealth University.

Salary: \$139,033 for 12 months
Rank: General Counsel and Special Assistant Attorney General and Assistant Professor

APPOINTMENT OF ASSISTANT WOMEN'S BASKETBALL COACH

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Ms. Michele C. Koclanes as Assistant Women's Basketball Coach, effective May 25, 2008.

Ms. Koclanes received an M.A. in Speech and Interpersonal Communication in 2004 from New York University and a B.A. in Leadership Studies in 2002 from the University of Richmond. Since 2004, she has been Assistant Women's Basketball Coach at the University of Pennsylvania.

Salary: \$70,000 for 12 months
Rank: Assistant Women's Basketball Coach and Instructor

APPOINTMENT OF COUNSELOR COORDINATOR
FEDERAL TRIO UPWARD BOUND

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Ms. Lila A. Love as Counselor Coordinator, Federal TRIO Upward Bound, effective June 25, 2008.

Ms. Love received an M.A. in Sociology in 1982 from the New School for Social Research and a B.A. in Political Science/Sociology in 1978 from Fayetteville State University. Since 2002, she has been Director of the Upward Bound Program at Hampton University.

Salary: \$41,000 for 12 months
Rank: Counselor Coordinator, Federal TRIO Upward Bound, and Instructor

APPOINTMENT OF ADMISSIONS COUNSELOR

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Ms. Lauren Malvagna as Admissions Counselor, effective July 10, 2008.

Ms. Malvagna received a B.A. in Communication Studies in 2007 from Christopher Newport University. Since 2007, she has been an Admissions Counselor at Regent University. Prior to that, Ms. Malvagna was a Student Manager, University Tour Guide and Administrative Assistant at Christopher Newport University.

Salary: \$30,000 for 12 months
Rank: Admissions Counselor and Assistant Instructor

APPOINTMENT OF ASSOCIATE HEAD STRENGTH AND CONDITIONING COACH

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Ryan Martin as Associate Head Strength and Conditioning Coach, effective June 25, 2008.

Mr. Martin received an M.S. in Exercise Science/Biomechanics in 2000 from Indiana State University and a B.A. in Physical Education in 1998 from Anderson University. Since 2004, he has been a Strength and Conditioning Coordinator at Hofstra University.

Salary: \$40,000 for 12 months
Rank: Associate Head Strength and Conditioning Coach and Instructor

APPOINTMENT OF ASSISTANT ROWING COACH

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Ms. Lisa Milne as Assistant Rowing Coach, effective June 10, 2008.

Ms. Milne received a Bachelor of Science in Sport Sciences in 2002 from Ohio University. Since 2006, she has been Head Rowing Coach at the College of William and Mary.

Salary: \$30,000 for 12 months
Rank: Assistant Rowing Coach and Assistant Instructor

APPOINTMENT OF DIRECTOR OF STUDENT OMBUDSPERSON SERVICES

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Ms. Stella V. Mims as Director of Student Ombudsperson Services, effective June 25, 2008.

Ms. Mims received a B.S. in Human Services in 2005 from Old Dominion University. Since 1986, she has held positions as Assistant to the Vice President for Student Services and Student Advocate at Old Dominion University. Ms. Mims currently serves as Director of Student Ombudsperson Services in a classified position.

Salary: \$52,913 for 12 months
Rank: Director of Student Ombudsperson Services and Assistant Instructor

APPOINTMENT OF COORDINATOR OF OUTDOOR ADVENTURE PROGRAMMING

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Ms. Bridget K. Nemeth as Coordinator of Outdoor Adventure Programming, Office of Recreational Sports, effective August 10, 2008.

Ms. Nemeth received an M.S. in Recreation & Leisure Services-Recreation Management in 2003 from Texas State University and a B.S. in Secondary Education/History in 2001 from the University of Maryland College Park. Since 2006, she has been an Event Specialist for Activities in West Trenton, New Jersey. Prior to that, Ms. Nemeth was Assistant Director of Campus Activities and Recreation Programs at Rider University.

Salary: \$40,000 for 12 months
Rank: Coordinator of Outdoor Adventure Programming and Instructor

**APPOINTMENT OF ASSISTANT VICE PROVOST
FOR PLANNING AND DEVELOPMENT**

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Frederick Patterson as Assistant Vice Provost for Planning and Development, Office of Distance Learning, effective July 10, 2008.

Mr. Patterson received an M.P.A. in 1996 from Old Dominion University, a Bachelor of Technology in 1990 from Peru State College and is a Doctor of Education candidate at National-Louis University. Since 2007, he has been Director of Military Strategy at National-Louis University. From 2005-08, Mr. Patterson was Director of Quality Assurance for the Accrediting Council for Independent Colleges and Schools (ACICS).

Salary: \$110,000 for 12 months
Rank: Assistant Vice Provost for Planning and Development and Instructor

APPOINTMENT OF ADMISSIONS COUNSELOR

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Ms. Tiffany Ray as Admissions Counselor, effective July 10, 2008.

Ms. Ray received a B.S.B.A. in Marketing in 2007 from Old Dominion University and is a candidate for a Master's in Business Administration. Since 2007, she has been a Marketing Intern in the Office of Admissions at Old Dominion University.

Salary: \$30,000 for 12 months
Rank: Admissions Counselor and Assistant Instructor

APPOINTMENT OF SENIOR PROJECT SCIENTIST

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Solomon R. Sherfey as Senior Project Scientist, Office of Research, effective July 10, 2008.

Mr. Sherfey received an M.S. in Computer Science in 1991 from the Naval Postgraduate School and a B.S. in Electronic Technology in 1982 from Chapman College. Since 2001, he has been a Program Supervisor at Northrop Grumman Mission Systems, JWFC Support Team.

Salary: \$85,000 for 12 months
Rank: Senior Project Scientist and Instructor

APPOINTMENT OF COUNSELOR
STUDENT SUPPORT SERVICES

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Ms. Passion M. Studivant as Counselor, Student Support Services, effective August 10, 2008.

Ms. Studivant received a B.S. in Criminal Justice in 2006 at Old Dominion University and is pursuing a Master of Science in Education in Counseling. Since 2007, she has been an Advisor for the Access College Foundation. Ms. Studivant was also a Counselor Assistant for the Student Support Services program.

Salary: \$41,619 for 12 months
Rank: Counselor, Student Support Services, and Instructor

APPOINTMENT OF ASSISTANT SWIM COACH

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the appointment of Mr. Nathan Tschohl as Assistant Swim Coach, effective August 18, 2008.

Mr. Tschohl received a B.S. in Criminal Justice in 2006 from Old Dominion University and is currently enrolled in a Master of Science in Education program in Sports Management at Old Dominion University. Since 2006, he has been a part-time Assistant Swim Coach at Old Dominion University.

Salary: \$30,000 for 12 months
Rank: Assistant Swim Coach and Assistant Instructor

The Committee approved by unanimous vote the proposal to establish the Center for Accelerator Science, an interdisciplinary research and education Center in the College of Sciences. The Center should attract significant external funding, engender spin-off industries and add to the University's capacity for generating patents. The Center will be based on already substantial research efforts currently underway at Old Dominion and Jefferson Lab in accelerator physics.

The following resolution was brought forth as a recommendation of the Academic and Research Advancement Committee and was approved unanimously by all members present and voting (*Ampy, Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

APPROVAL TO ESTABLISH THE CENTER FOR ACCELERATOR SCIENCE
COLLEGE OF SCIENCES

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the Center for Accelerator Science in the College of Sciences, effective October 1, 2008.

Purpose: The proposed interdisciplinary research and education Center for Accelerator Science would be unique in Virginia and one of only a handful of such programs in the country. Since accelerator science is inherently interdisciplinary, the Center would be a source of innovation in pure and applied science, which is likely to engender spin-off industries and add to the University's capacity for generating patents. The Center will be based on already substantial research efforts currently underway at ODU in accelerator physics, involving three faculty in the Department of Physics, as well as three Jefferson Lab Professors of Accelerator Physics.

The College of Sciences expects this Center to attract talented students and faculty, including an internationally prominent director, and ultimately contribute substantially to the University's network of successful, supportive alumni. Most importantly, by partnering with Jefferson Lab to work on the design for the next generation of high-profile accelerators, Old Dominion University would provide intellectual leadership in a large and growing academic field.

This scientific and academic enterprise should attract significant external funding because of the many opportunities in accelerator science today. For example, researchers at Jefferson Lab and elsewhere are now designing a 4th generation light source, which will use the superconducting RF technology in which Jefferson Lab specializes. The cost of this facility, which is likely to be located in the Southeast, is estimated at more than \$1 billion. However, focused research and development could reduce the cost of the facility by one-third. This is just one example of a project that would benefit from a strong University-based Center in Accelerator Science. This situation presents a clear window of opportunity. By acting soon, Old Dominion can stay ahead of worthy competitors who, for the moment, lack our unique set of local advantages.

The Center would be interdisciplinary, including faculty in physics, chemistry, mathematics and computer sciences, as well as faculty from other colleges (mechanical and electrical engineering and possibly health sciences). In addition to ODU faculty, Jefferson Lab scientists (Jefferson Lab Accelerator Physics Professors and associated adjuncts), graduate students and postdoctoral fellows will participate in the Center. The Center would train the next generation of accelerator and light-source scientists and engineers and position ODU alongside Cornell, Maryland, Michigan State, Stanford, UCLA and a handful of other U.S. universities offering comparable graduate programs—a handful that at present includes only one university in the South, LSU. The College believes that the establishment of the Center will lead to academic, scientific, technological, and economic benefits for ODU, the Commonwealth of Virginia, and the Jefferson Lab. The Center will attract extensive research grant support from a number of sources.

Structure: The Center will have a Director and affiliated faculty, all of whom will retain their full-time tenure track appointments in their home departments. The Center will be located in the Physics Department because of the connection with accelerator physics. The Director will have

a tenured appointment in the Department of Physics and will be chosen following a national search, with the approval of the Dean and the Provost. The Director will report to the chair of the Department of Physics. The Center will have an Advisory Board, appointed by the Dean of the College of Sciences in consultation with the Chair of Physics and the Director, that will include representatives from Jefferson Lab, industry, the departments of the College of Sciences, and other colleges of the University. The Advisory Board will make recommendations on the operation of the Center to the Chair of Physics and the Dean. Affiliated faculty will be appointed on a yearly basis with the approval of the Director, a majority of the Advisory Board, the Chair of Physics and the Dean.

An internationally prominent scientist in the field of accelerator physics, with substantial peer-reviewed research grant support that will be transferred to ODU, will be recruited as the Director of the Center by August 2009. For this purpose the College will use a faculty position currently available in the College. The Jefferson Lab will provide 50% of the faculty salary and benefits of the Director each year. In addition, Jefferson Lab has also pledged to provide some equipment and funding for graduate students plus access to their facilities. However, the College is requesting that the University provide a new faculty position at the Assistant Professor level for the Center starting in August 2011 to promote the development of the Center and encourage Jefferson Lab to continue and increase their support of the Center and the University.

Capital and Development Costs: Additional funds are not requested from the University at this time. Funding and space for the Center will be provided by reallocation within the College of Sciences.

ODU is already receiving substantial support from Jefferson Lab in the form of three part-time accelerator physics faculty and stipends (\$264,000/year) for a total of 12 graduate students (10 graduate students directly and two additional graduate students by outside sources through Jefferson Lab).

Review: The Chairs of the Department of Physics and any other departments in which affiliated faculty have tenure-track appointments, the Dean of the College of Sciences or an External Review Committee appointed by the Dean or the Provost will review the Center at the end of the third year of operation.

Modification of Operating Procedures: These procedures may be modified by a proposal from the Dean of the College of Sciences, after consultation with the Advisory Board, the Director, and the Chair of the Department of Physics, which is then approved by the Provost.

The Committee approved by unanimous vote the proposed reorganization of the departmental structure in the College of Business and Public Administration. The current structure is difficult to manage because of the large number of faculty and three distinct disciplines within one department. Thus, the Department of Business Administration will be re-divided into the three departments of Finance, Management and Marketing as it was prior to 1997.

The following resolution was brought forth as a recommendation of the Academic and Research Advancement Committee and was approved unanimously by all members present and voting (*Ampy, Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

**APPROVAL TO REORGANIZE THE DEPARTMENTAL STRUCTURE IN THE
COLLEGE OF BUSINESS AND PUBLIC ADMINISTRATION**

RESOLVED, that upon the recommendation of the Academic and Research Advancement Committee, the Board of Visitors approves the reorganization of the departmental structure in the College of Business and Public Administration, effective October 1, 2008.

Rationale: The Department of Business Administration was created as a combination of the Finance, Management, and Marketing disciplines in 1997 to save money in the budget of the College of Business and Public Administration. Three departments were combined under one Department Chair. Each of the two disciplines that are not the specialty of the Department Chair are led by a discipline coordinator, who receives one course release per semester but no monetary compensation.

This arrangement has proven quite unsatisfactory in many respects. The current Department Chair for Business Administration has 39 faculty members in three different disciplines and multiple sub-disciplines reporting to him. The management faculty include faculty specialized in organizational behavior, human resources, and strategy. Finance faculty include finance, business law, real estate, and insurance faculty. This large structure is very difficult to manage. As an example, departments need regular meetings in order to function as a team. In this department, the general meetings are too large and diverse to tackle problems relative to, for example, hiring new faculty in a discipline.

The Area Coordinators schedule courses and oversee several of the administrative functions. Setting a strategic direction for the discipline and creation of new programs is not their responsibility and cannot be accomplished by a Department Chair with limited knowledge of that discipline. The Department Chair is responsible for faculty evaluation, but hiring and mentoring adjunct faculty is better accomplished by the Area Coordinators who assign workload. Some faculty in the sub-disciplines feel that this process disadvantages them since the Department Chair is not in their area and has less familiarity with their research outlets. Summer is a particularly challenging time under the current structure. During the summer, students in the disciplines that are overseen by Area Coordinators may have no advising or administrative oversight.

Under the proposed restructuring, the Department of Business Administration will be re-divided into the three departments of Finance, Management and Marketing, as it was prior to 1997. The College of Business and Public Administration will thus have seven rather than five departments. The college will immediately begin an internal process to select Department Chairs for Management and Marketing. The budget difference would be absorbed currently by the College of Business and Public Administration through funds received annually from Distance Learning. Over time, the stipends may be included in the regular budget. Reverting to a policy where

Department Chairs receive stipends rather than an additional 20% of their salary to serve in this administrative capacity should, over time, make this revenue neutral.

The reorganized business departments will match the administrative structure of other business schools, and will have the leadership to develop curriculum and support faculty in an appropriate fashion. Finance, Management, and Marketing are separate departments within business schools at Virginia Tech Pamplin College of Business, Virginia Commonwealth University's School of Business, and George Mason University's School of Management.

This restructuring proposal was put before the faculty in the Department of Business Administration on August 25, 2008. They voted unanimously in support of it.

Committee members received information on two leaves of absence without compensation. Dr. Patrick G. Hatcher, Professor of Chemistry and Biochemistry and Batten Endowed Chair in Physical Sciences, gave a presentation on "Turning Nuisance Algae into Biodiesel." He discussed basics of how algae can be grown for biodiesel production utilizing nutrient wastes (considered pollutants) that would normally be discharged into the Chesapeake Bay as a food source for the algae. He also discussed recent progress and opportunities for commercialization.

Provost Simpson gave a presentation on "Student and Faculty Demographics." She presented information describing the characteristics of undergraduate and graduate students, students at the higher education centers and students served by distance learning, as well as enrollment trends for these students. Faculty data, including student/faculty ratios by College, were also presented.

Mohammad Karim presented an update on research at Old Dominion in four areas: research clusters, new research facilities, investments and base expansion, and research and development expenditure data.

ADMINISTRATION AND FINANCE COMMITTEE

The Rector called on Mr. Hixon for the report of the Administration and Finance Committee. Mr. Hixon stated that the Committee held the first part of its meeting in joint session with the Academic and Research Advancement Committee to receive a briefing from Vice President Fenning on Level II legislation. Background was provided on the larger Higher Education Restructuring effort, including Level I authority and the related policies the University adopted in 2005 to activate this authority. Institutional criteria required to petition for Level II authority, as well as the prerequisites that are required to achieve functional authority in the areas of procurement and IT, were provided.

Following joint session, the Administration and Finance Committee reconvened and considered the Resolution Regarding a Memorandum of Understanding in Support of Additional Operating Authority Under HB 1390 to affirm the Board's support of Old

Dominion University entering a Memorandum of Understanding for additional operating authority under HB 1390.

The following resolution was brought forth as a recommendation from the Administration and Finance Committee and was approved unanimously by all members present and voting (*Ampy, Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

RESOLUTION REGARDING A MEMORANDUM OF UNDERSTANDING IN SUPPORT OF ADDITIONAL OPERATING AUTHORITY UNDER HB1390

WHEREAS, the General Assembly has passed and the Governor has signed HB1390, amending and reenacting § 23-38-90 of the *Code of Virginia*, which allows the University to enter into a Memorandum of Understanding for additional operating authority in the areas of information technology and procurement; and

WHEREAS, as a condition of entering into such a Memorandum of Understanding, the Board of Visitors must pass a Resolution, affirmed by at least two-thirds of the Board, expressing that the University is qualified to be, and should be, governed by such a Memorandum of Understanding for additional operating authority;

THEREFORE, BE IT RESOLVED, that the Rector and Visitors of Old Dominion University believe that the University is qualified to be, and should be, governed by a Memorandum of Understanding for additional operating authority in the functional areas of information technology and procurement; and

BE IT FURTHER RESOLVED, that the President of the University and its Vice President of Administration and Finance, in cooperation with the applicable Cabinet Secretaries, are authorized to proceed in obtaining the additional operational authority outlined in § 23-38.90 of the Code of Virginia relative to information technology and procurement and to take all actions deemed by them to be necessary to facilitate this undertaking; and

BE IT FURTHER RESOLVED, that upon approval of the Memorandum of Understanding, the President and Vice President are granted full authority and responsibility for management of the information technology and procurement functions of the University; and

BE IT FURTHER RESOLVED, that this Resolution was approved by more than two thirds of the Visitors of Old Dominion University in open session on September 19, 2008, in Norfolk, Virginia.

Level II legislation also requires Board adoption of the Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth of Virginia by Subchapter 2 of the Restructured Higher Education

Financial & Administrative Operations Act. These Rules must be followed by institutions seeking Level II authority in lieu of the Virginia Public Procurement Act.

The following resolution was brought forth as a recommendation from the Administration and Finance Committee and was approved unanimously by all members present and voting (*Ampy, Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

**RESOLUTION TO ADOPT THE RULES GOVERNING PROCUREMENT
OF GOODS, SERVICES, INSURANCE AND CONSTRUCTION BY A
PUBLIC INSTITUTION OF HIGHER EDUCATION
OF THE COMMONWEALTH OF VIRGINIA**

RESOLVED, that upon the recommendation of the Administration and Finance Committee, the Board of Visitors approves the adoption of of the Rules Governing Procurement of Goods, Services, Insurance, and Construction by a Public Institution of Higher Education of the Commonwealth of Virginia Governed by Subchapter 2 of the Restructured Higher Education Financial and Administrative Operation Act, Chapter 4.10 (§2338.77 et. seq.) of Title 23 of the Code of Virginia.

**Rules Governing Procurement of Goods, Services, Insurance, and Construction
by a Public Institution of Higher Education of the Commonwealth of Virginia
Governed by Subchapter 2 of the
Restructured Higher Education Financial and Administrative Operations Act,
Chapter 4.10 (§ 2338.88
et seq.) of Title 23 of the Code of Virginia**

In accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 2338.88 et seq.) of Title 23 of the Code of Virginia, and in particular § 2338.90 of the Restructuring Act, the governing body of a public institution of higher education of the Commonwealth of Virginia that has entered into a memorandum of understanding with the Commonwealth pursuant to Subchapter 2 of the Restructuring Act must adopt the following Rules Governing Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and construction by the Institution:

§ 1. Purpose.

The purpose of these Rules is to enunciate the public policies pertaining to procurement of goods, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the Institution, the contractor, or some third party is providing the consideration.

§ 2. Scope of Procurement Authority.

Subject to these Rules, and the Institution's continued substantial compliance with the terms and conditions of its memorandum of understanding with the Commonwealth pursuant to § 2338.90 and the requirements of Chapter 4.10 of the Restructuring Act, the Institution shall

have and shall be authorized to have and exercise all of the authority relating to procurement of goods, services, insurance, and construction, including but not limited to capital outlay related procurement and information technology related procurement, that Institutions are authorized to exercise pursuant to Subchapter 2 of the Restructuring Act.

§ 3. Competition is the Priority.

To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body of the Institution that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification based selection process. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

§ 4. Definitions.

As used in these Rules:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the Institution's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is a method of contractor selection that includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by publication in a newspaper or newspapers of general circulation in the area in which the

contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular

request. Public notice also shall be published on the Department of General Services' central electronic procurement website and may be published on other appropriate websites. In addition, proposals may be solicited directly from potential contractors.

3. a. Procurement of professional services. The procurement of professional services for capital projects shall be conducted using a qualification based selection process. The Institution shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man hours or cost for services. At the discussion stage, the Institution may discuss nonbinding estimates of total project costs, including, but not limited to, lifecycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

A contract for architectural or professional engineering services relating to construction projects may be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall be as set in the Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set in the Request for Proposal. Any unused amounts from any contract term may be carried forward. Competitive negotiations for such contracts may result in awards to more than one offeror provided the Request for Proposal stated the potential for a multivendor award.

b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Institution determine in writing and in its sole

discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror.

"Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Institution has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by publication on the Department of General Services' central electronic procurement website. Public notice also may be published in a newspaper of general circulation or on other appropriate websites, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

3. Public opening and announcement of all bids received.

4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, lifecycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

"Construction" means building, altering, repairing, improving, or demolishing any structure, building or highway, and any draining, dredging, excavation, grading, or similar work upon real property.

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Design-build contract" means a contract between the Institution and another party in which the party contracting with the Institution agrees to both design and build the structure, roadway or other item specified in the contract.

"Goods" means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.

"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured.

"Institution" means, a public institution of higher education of the Commonwealth that has entered into a memorandum of understanding for procurement with the Commonwealth to be governed by the provisions of Subchapter 2 of the Restructuring Act.

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services and includes small construction projects valued not over \$1 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall still apply to professional services for such small construction projects.

"Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering.

"Public body" means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board, or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in these Rules.

"Public contract" means an agreement between the Institution and a nongovernmental source that is enforceable in a court of law.

"Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

"Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

"Restructuring Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 2338.88 et seq.) of Title 23 of the Code of Virginia.

"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

"Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction adopted by the governing body of the Institution.

"Services" means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

"Sheltered workshop" means a work oriented rehabilitative facility with a controlled working environment and individual goals that utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.

§ 5. Methods of procurement.

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation. Qualification based Selection shall be used for design services.

C. Goods, services, or insurance may be procured by competitive negotiation.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

1. By the Institution on a fixed price design-build basis or construction management basis under § 7;

2. By the Institution for the construction, alteration, repair, renovation, or demolition of buildings; or

3. By the Institution for the construction of highways and any draining, dredging, excavation, grading, or similar work upon real property.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The Institution shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and may be published on other appropriate websites.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.

G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or

the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.

I. Upon a determination made in advance by the Institution and set forth in writing that the purchase of goods, products, or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination.

J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.

§ 6. Cooperative procurement.

A. In circumstances where the Institution determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the Institution that meet its business goals and objectives, the Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The Institution may purchase from any authority, department, agency, institution, city, county, town, or other political subdivision of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in these Rules and the administrative policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

B. In circumstances where statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to meet the Institution's business goals and objectives, and as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:

1. The Institution may purchase goods and nonprofessional services, from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government; and

2. The Institution may purchase telecommunications and information technology goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government.

§ 7. Design-build or construction management contracts authorized.

A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this section.

B. Procurement of construction by the design-build or construction management method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested

to submit their qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.

§ 8. Modification of the contract.

A. A contract awarded by the Institution may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25 percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's president or his designee. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

B. The Institution may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract modifications.

§ 9. Discrimination prohibited; participation of small, women-and minority-owned business.

A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the Institution shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

B. The Institution shall establish programs consistent with this section to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. The Institution shall submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise.

C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women-owned and minority-owned businesses, the Governor is by law authorized and encouraged to require the Institution to implement appropriate enhancement or remedial measures consistent with prevailing law.

D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

§ 10. Employment discrimination by contractor prohibited; required contract provisions.

The Institution shall include in every contract of more than \$10,000 the following provisions:

1. During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The

contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor will include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

§ 11. Drug-free workplace to be maintained by contractor; required contract provisions.

The Institution shall include in every contract over \$10,000 the following provisions: During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with these Rules, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of the contract.

§ 12. Use of brand names.

Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make, or manufacturer shall not restrict bidders to the specific brand, make, or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the Institution in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

§ 13. Comments concerning specifications.

The Institution shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

§ 14. Prequalification generally; prequalification for construction.

A. Prospective contractors may be prequalified for particular types of supplies, services, insurance, or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant to a prequalification process for construction projects adopted by the Institution. The process shall be consistent with the provisions of this section.

The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of

prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 34 of these Rules.

In all instances in which the Institution requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Institution shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

A decision by the Institution denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

C. The Institution may deny prequalification to any contractor only if the Institution finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Institution shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;

2. The contractor does not have appropriate experience to perform the construction project in question;

3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past 10 years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Institution without good cause. If the Institution has not contracted with a contractor in any prior construction contracts, the Institution may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause.

The Institution may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

5. The contractor or any officer, director, owner, project manager, procurement manager, or chief financial official thereof has been convicted within the past 10 years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ 2.24367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental Frauds Act (§ 18.2498.1 et seq.) of the Code of Virginia, (iii)

Chapter 4.2 (§ 59.168.6 et seq.) of Title 59.1 of the Code of Virginia, or (iv) any substantially similar law of the United States or another state;

6. The contractor or any officer, director, or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and

7. The contractor failed to provide to the Institution in a timely manner any information requested by the Institution relevant to subdivisions 1 through 6 of this subsection.

§ 15. Negotiation with lowest responsible bidder.

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

§ 16. Cancellation, rejection of bids; waiver of informalities.

A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid, or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

B. The Institution may waive informalities in bids.

§ 17. Exclusion of insurance bids prohibited.

Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a prospective insurer pursuant to § 18.

§ 18. Debarment.

Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance, or construction, for specified periods of time. Any debarment procedure shall be established in writing by the Institution. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for the Institution.

§ 19. Purchase programs for recycled goods; Institution responsibilities.

A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ 10.11425.6, 10.11425.7, and 10.11425.8 of the Code of Virginia and §§ 20 and 22 of these Rules.

B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets Development Council, shall advise the Institution concerning the designation of recycled goods.

§ 20. Preference for Virginia products with recycled content and for Virginia firms.

A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms, or corporations; otherwise the tie shall be decided by lot.

B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed by the Institution to the lowest responsive and responsible bidder who is a resident of Virginia.

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

§ 21. Preference for Virginia coal used in the Institution.

In determining the award of any contract for coal to be purchased for use in the Institution with state funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.

§ 22. Preference for recycled paper and paper products used by the Institution.

A. In determining the award of any contract for paper and paper products to be purchased for use by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for the purpose intended, so long as the price is not more than 10 percent greater than the price of the low responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.

B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

§ 23. Withdrawal of bid due to error.

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents, and materials used in the preparation of the bid sought to be withdrawn.

One of the following procedures for withdrawal of a bid shall be selected by the Institution and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or designated official his original work papers, documents, and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents, and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his

bid. The contract shall not be awarded by the Institution until the two-hour period has elapsed. The mistake shall be proved only from the original work papers, documents, and materials delivered as required herein.

B. The Institution may establish procedures for the withdrawal of bids for other than construction contracts.

C. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

§ 24. Contract Pricing Arrangements.

A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited by these Rules.

B. Except in case of emergency affecting the public health, safety, or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.

C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.

§ 25. Workers' compensation requirements for construction contractors and subcontractors.

A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2800 et seq.) of Title 65.2 of the Code of Virginia and (ii) provides prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.

B. The Department of General Services shall provide the form to the Institution. Failure of the Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.

C. No subcontractor shall perform any work on a construction project of the Institution unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2800 et seq.) of Title 65.2 of the Code of Virginia.

§ 26. Retainage on construction contracts.

A. In any contract issued by the Institution for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least 95 percent of the earned sum when payment is due, with no more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.

§ 27. Public construction contract provisions barring damages for unreasonable delays declared void.

A. Any provision contained in any public construction contract of the Institution that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.

B. Subsection A shall not be construed to render void any provision of a public construction contract awarded by the Institution that:

1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;
2. Requires notice of any delay by the party claiming the delay;
3. Provides for liquidated damages for delay; or
4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against the Institution for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract of the Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the Institution in investigating, analyzing, negotiating, litigating, and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate, and arbitrate the claim. The percentage paid by the Institution shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is determined through litigation or arbitration to have been made in bad faith.

§ 28. Bid bonds.

A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 million shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$1 million.

§ 29. Performance and payment bonds.

A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Institution, the contractor shall furnish to the Institution the following bonds:

1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the Institution.

2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.

"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.

C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds for construction contracts below \$1 million.

F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

§ 30. Alternative forms of security.

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Institution equivalent to a corporate surety's bond.

§ 31. Bonds on other than construction contracts.

The Institution may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

§ 32. Action on performance bond.

No action against the surety on a performance bond shall be brought by the Institution unless brought within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

§ 33. Actions on payment bonds; waiver of right to sue.

A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on

the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.

B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

§ 34. Public inspection of certain records.

A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.23700 et seq.).

B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution shall not be open to public inspection.

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the Institution decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.23700 et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

§ 35. Exemption for certain transactions.

A. The provisions of these Rules shall not apply to:

1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § 2376.1. However, selection of these

services shall be governed by the Uniform Management of Institutional Funds Act (§ 55268.1 et seq.) as required by § 2376.1.

2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the Institution. However, such purchase procedures shall provide for competition where practicable.

3. Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design, or construction is \$50,000 or less or (ii) the Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of these Rules.

4. The purchase of goods and services by the Institution when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of these Rules, the Institution may comply with such federal requirements, notwithstanding the provisions of these Rules, only upon the written determination of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract.

§ 36. Permitted contracts with certain religious organizations; purpose; limitations.

A. The Opportunity Reconciliation Act of 1996, P.L. 104193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104193.

C. The Institution, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that it does not discriminate against faith-based organizations.

E. A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender, or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to

audit by the Institution. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.

F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.

G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e1 et seq.), to employ persons of a particular religion.

H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the Institution shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

The Institution shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization a notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."

§ 37. Exemptions from competition for certain transactions.

The Institution may enter into contracts without competition, as that term is described in subsections A through J of § 5 (Methods of procurement) of these Rules, for:

1. The purchase of goods or services that are produced or performed by or related to:
 - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;
 - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;
 - c. Private educational institutions; or
 - d. Other public educational institutions.
2. Speakers and performing artists;
3. Memberships and Association dues;
4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;
5. Group travel in foreign countries;
6. Conference facilities and services;
7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;
8. Royalties; or

9. The purchase of legal services, provided that the Office of the Attorney General has been consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.

§ 38. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.

The Institution may enter into contracts for insurance or electric utility service without competitive sealed bidding or competitive negotiation if purchased through an association of which the Institution is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the Institution has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

§ 39. Definitions.

As used in §§ 39 through 46, unless the context requires a different meaning:

"Contractor" means the entity that has a direct contract with the Institution.

"Debtor" means any individual, business, or group having a delinquent debt or account with any state agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or services by the Institution.

"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

§ 40. Exemptions.

The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission.

§ 41. Retainage to remain valid.

Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall remain valid.

§ 42. Prompt payment of bills by the Institution.

A. The Institution shall promptly pay for the completely delivered goods or services by the required payment date.

Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ 2.24800 et seq.) of the Code of Virginia.

B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.

§ 43. Defect or impropriety in the invoice or goods and/or services received.

In instances where there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall notify the supplier of the defect or impropriety, if the

defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services.

§ 44. Date of postmark deemed to be date payment is made.

In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.

§ 45. Payment clauses to be included in contracts.

Any contract awarded by the Institution shall include:

1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the Institution for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the Institution attributable to the work performed by the subcontractor under that contract; or

b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Institution for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.

4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month." Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Institution. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

§ 46. Interest penalty; exceptions.

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the Institution to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.11812 of the Code of Virginia.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between the Institution and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ 2.24800 et seq.) of the Code of Virginia, commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.

§ 47. Ineligibility.

A. Any bidder, offeror, or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of disqualification or ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.

If the evaluation reveals that the bidder, offeror, or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror, or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

§ 48. Appeal of denial of withdrawal of bid.

A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by instituting legal action as provided in § 54.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance

with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

§ 49. Determination of nonresponsibility.

A. Following public opening and announcement of bids received on an Invitation to Bid, the Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.

If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.

D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

§ 50. Protest of award or decision to award.

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.

§ 51. Effect of appeal upon contract.

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.

§ 52. Stay of award during protest.

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a

written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

§ 53. Contractual disputes.

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

B. The Institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the Institution. If the Institution has established administrative procedures meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution (ADR) as an administrative procedure.

C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's decision on the claim, unless the Institution fails to render such decision within the time specified in the contract.

D. The decision of the Institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Institution by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

§ 54. Legal actions.

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a responsible bidder, the court may direct the Institution to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest

of an award or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution.

E. A contractor may bring an action involving a contract dispute with the Institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to these Rules or § 33.1387 of the Code of Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror, or contractor need not utilize administrative procedures meeting the standards of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror, or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise.

G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.

§ 55. Administrative appeals procedure.

A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution (ADR) procedure.

B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision.

§ 56. Alternative dispute resolution.

The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § 2.2514 of the Code of Virginia, as applicable.

§ 57. Ethics in public contracting.

The Institution and its governing body, officers and employees shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.24367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.

§ 4.0. The following provides the Policy for Capital Projects Excluding Leases of Real Property:

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 2338.88 et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that "any public institution of higher education may enter into a memorandum of understanding with the appropriate Cabinet Secretary or Secretaries, as designated by the Governor, for additional operational authority in any operational area or areas adopted by the General Assembly in accordance with law provided that the authority granted in the memorandum of understanding is consistent with that Institution's ability to manage its operations in the particular area or areas." See § 2338.90 of the Code of Virginia.

II. GENERAL.

To be eligible for such additional authority provided in this section, an institution seeking capital outlay operational authority shall document in any request for a memorandum of understanding in this functional area, the following criteria:

1. The Institution must have a signed memorandum of understanding, currently in effect, with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the current Appropriation Act, as provided in subsection C of § 2.21132;

2. The Board shall adopt the policies that govern capital outlay procedures as provided in this section; and

3. The President of the Institution, acting through the appropriate person, shall be responsible for overall capital project planning. Such person or his designee or designees shall have obtained a Virginia Construction Contracting Officer designation from the Bureau of Capital Outlay Management of the Department of General Services and at least one designee shall be an architect or engineer licensed to practice in the Commonwealth, unless exempted by the Department.

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

The President of the Institution, acting through the appropriate designee, shall be responsible for overall capital project planning.

This Policy shall set forth the post-authorization system of reviews, approvals, policies and procedures governing capital projects at a public institution of higher education and carried out by a variety of central State agencies, and also the traditional preauthorization approval process for projects funded entirely with nongeneral funds and without any proceeds from State Tax Supported Debt. This Policy shall govern the planning and budget development for the Institution's capital projects, capital project authorization, and the implementation of capital projects, whether funded by a general fund appropriation, proceeds from State Tax Supported Debt, or funding from other sources, and shall govern 1) the process for developing one or more capital project programs for the Institution, 2) authorization of new capital projects, 3)

procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting requirements. This Policy is not intended to affect any other powers and authorities granted to a public institution of higher education pursuant to the Appropriation Act and the Code of Virginia, including other provisions of the Restructuring Act or the Institution's enabling legislation.

This Policy shall be effective on the effective date of an Institution's memorandum of understanding with the appropriate Cabinet Secretary or Secretaries, as designated by the Governor. The implementing policies and procedures adopted by the President, acting through the appropriate designee, to implement this Policy, shall continue to be subject to any other policies adopted by the Board of Visitors affecting capital projects of the Institution.

III. DEFINITIONS.

As used in this Policy for Capital Projects Excluding Leases of Real Property, the following terms shall have the following meanings, unless the context requires otherwise:

"Board of Visitors" or "Board" means the governing body of any public institution of higher education in Virginia, including the State Board for Community Colleges.

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

"Capital project" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, and improvements or renovations. The term shall not include any capital lease.

"Enabling legislation" means those chapters, other than Chapter 4.10 (§ 2338.88 et seq.), of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth.

"Major Capital Project" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing \$1 million or more, and improvements or renovations of \$1 million or more. The term shall not include any capital lease.

"President" shall mean the president, superintendent, or chancellor of a public institution of higher education.

"Public institution of higher education" or "Institution" means a two-year or four-year public institution of higher education, or the Virginia Community College System, entering into a memorandum of understanding with the appropriate Cabinet Secretary or Secretaries, as designated by the Governor.

"Restructuring Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 2338.88 et seq.) of Title 23 of the Code of Virginia.

"Rules" means the "Rules Governing Procurement of Goods, Services, Insurance, and Construction" attached to this Policy as Attachment 1.

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

§ 1. Capital program.

The Institution shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the Institution for a given period of time consistent with its published Master Plan. This process may or may not mirror the Commonwealth's requirements for capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board may approve amendments to the program for Major Capital Projects annually or more often if circumstances warrant. Each capital project program shall meet the Institution's mission and institutional objectives, and shall be appropriately authorized by the Institution, be of a size and scope to provide for the defined program needs, be designed in accordance with all applicable building codes and handicapped accessibility standards as well as the Institution's design guidelines and standards, and be costed to reflect current costs and escalated to the midpoint of anticipated construction.

§ 2. Authorization of capital projects.

A. The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its size, scope, budget, and funding. The Institution shall adopt procedures for approving the size, scope, budget, and funding of all other capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those preappropriation approvals of the State's governmental agencies then applicable, and shall follow the State's process for capital budget requests.

B. The implementation of capital projects shall be carried out so that the capital project as completed is the capital project approved by the Board for Major Capital Projects and according to the procedures adopted by the Institution for all other capital projects. The Institution shall ensure strict adherence to this requirement. Accordingly, the budget, size, and scope of a capital project shall not be materially changed beyond the plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described above. Minor changes shall be permissible if they are determined by the Institution to be justified. Major Capital Projects may be submitted for Board of Visitors authorization at any time but must include a statement of urgency if not part of the approved Major Capital Project program.

§ 3. Procurement of Capital Professional Services and Construction Services.

A. Specifically with regard to the procurement of Capital Professional Services, Capital Projects, and Major Capital Projects, an Institution may elect to have all such procurements be governed by either (i) the Virginia Public Procurement Act (§ 2.24300 et seq.) of the Code of Virginia or (ii) the Rules Governing Procurement of Goods, Services, Insurance, and Construction that are incorporated in § 3.0 of this Act and that pertain to the procurement of Capital Professional Services, Capital Projects, and Major Capital Projects.

B. If an Institution elects to be governed by the Rules that are incorporated in § 3.0 of this Act, procurements by the Institution shall result in the purchase of high quality services and construction at reasonable prices and shall be consistent with such Rules. Specifically, the Institution shall:

1. Seek competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;
2. Conduct all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or institutional policy;

3. Make procurement rules clear in advance of any competition;
4. Provide access to the Institution's business to all qualified vendors, firms, and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the Institution;
5. Include in contracts of more than \$10,000 the contractor's agreement not to discriminate against employees or applicants because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by State law except where there is a bona fide occupational qualification reasonably necessary to the contractor's normal operations; and
6. Provide for a nondiscriminatory procurement process, and include appropriate and lawful provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.

C. The Institution shall develop implementing procedures for the procurement of Capital Professional Services and construction services at the Institution. The procedures shall implement this Policy and provide for:

1. A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules, and (ii) § 45.06 of the 200608 Appropriation Act;
2. A prequalification procedure for contractors or products;
3. A procedure for special construction contracting methods, including but not limited to Design-build and construction management contracts; and
4. A prompt payment procedure.

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

§ 4. Design reviews and code approvals.

A. The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope, and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be required. For all capital projects other than Major Capital Projects, the Institution shall adopt procedures for design review and project authorization based on the size, scope, and cost estimate provided with the design. All capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable accessibility code.

B. For purposes of building code compliance, the Institution shall continue to use the services of the Department of General Services, Division of Engineering and Buildings.

§ 5. Environmental impact reports.

The Institution shall assess the environmental, historic preservation, and conservation impacts of all capital projects and minimize and otherwise mitigate all adverse impacts to the extent practicable. The Institution shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but with a cost of \$300,000 or more.

§ 6. Building demolitions.

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

§ 7. Building or land acquisitions.

Capital projects involving building or land acquisition shall be subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. The Institution shall ensure that the project management system implemented pursuant to § 9 of this Policy provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the Institution shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the Institution or the Commonwealth and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of § 2 of this Policy is achieved. The Institution also shall ensure that, where applicable to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.

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

2. The Institution shall ensure that, in the case of capital projects involving the acquisition of buildings or land, the project management systems implemented under § 9 of this Policy provide for a review of the following matters prior to acquisition of the building or land: that any land can be developed for its intended purpose without extraordinary cost; that an environmental engineer has been engaged by the Institution to provide an assessment of any environmental conditions on the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the building or land; that utilities and other services to the land are adequate or can reasonably be provided or have been provided in the case of building acquisitions; that the condition and grade of the soils have been examined to determine if any conditions exist that would require extraordinary site work or foundation systems; and that the purchase cost is reasonable in relationship to the value of the property.

3. A survey shall be prepared for any real property acquired, and an examination of title to the real property shall be conducted by a licensed attorney or, in the alternative, a commitment for title insurance shall be procured from a title insurance company authorized to do business in the Commonwealth. Based upon the survey and title examination or report, the Institution shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the Institution in fee simple, free and clear of all liens, encumbrances, covenants, restrictions,

easements, or other matters that may have a significant adverse effect upon the Institution's ability to own, occupy, convey, or develop the real property.

4. An appraisal conforming to the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Foundation shall be conducted of the real property to be acquired to determine its fair market value and the consistency of the fair market value with the price agreed upon by the Institution. For properties with an estimated value of \$1 million or more, the appraisal conducted shall be reviewed by a qualified appraiser in accordance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Foundation.

§ 8. Building or land dispositions.

The Board of Visitors shall approve the disposition of any building or land. Disposition of land or buildings, the acquisition or construction of which was funded entirely or in part by a general fund appropriation or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in accordance with general law applicable to State-owned property and with the Institution's enabling legislation.

§ 9. Project management systems.

The Institution shall implement one or more systems for the management of capital projects for the Institution. The systems may include the delegation of project management authority to appropriate Institution officials, including a grant of authority to such officials to engage in further delegation of authority as the Institution deems appropriate. The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors' policies applicable to closely related subjects such as selection of architects or policies applicable to the Institution's buildings and grounds. The project management systems may include one or more reporting systems applicable to capital projects whereby Institution officials responsible for the management of such projects provide appropriate and timely reports to the Institution on the status of such projects during construction.

§ 10. Reporting requirements.

In addition to complying with any internal reporting systems contained in the Institution's project management systems, as described in § 9 of this Policy, the Institution shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation or proceeds from State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed \$2 million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § 2338.109 C 3 of the Restructuring Act. As a matter of routine, the Institution shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.

§ 5.0. Any public institution of higher education in the Commonwealth shall be authorized to exercise operational authority pursuant to § 2.0, 3.0, or 4.0 of this Act, so long as the memorandum of understanding entered into with the appropriate Cabinet Secretary or Secretaries as required under § 1.0 is substantially identical to the provisions set forth in § 2.0, 3.0, or 4.0 of this Act, as the case may be. However, as provided in § 1.0 of this Act, a public institution of higher education in Virginia may be authorized to exercise additional operational

authority in a minimum of two, but not all three of the functional areas set forth under §§ 2.0, 3.0, and 4.0 pursuant to this Act.

Also required under Level II legislation is the approval by the Board of the University's SWaM Plan. The following resolution was brought forth as a recommendation from the Administration and Finance Committee and was approved unanimously by all members present and voting (*Ampy, Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

SWaM Procurement Plan
Fiscal Year 2009

Institution: Old Dominion University
 President: John R. Broderick, Acting President
 Secretariat: Viola O. Baskerville, Secretary of Administration
 Date: September 5, 2008

PURPOSE: The purpose of the Old Dominion University Small, Women-Owned and Minority-Owned (SWaM) program is to increase opportunities, participation and contract awards for Department of Minority Business Enterprise (DMBE) certified SWaM businesses in order to achieve the Commonwealth of Virginia's SWaM goals.

I. The University's FY 2009 SWaM expenditure goal for Small, Women-Owned and Minority-Owned businesses as a percentage of projected discretionary expenditures are listed below. These goals include expenditures with both prime contractors and subcontractors.

	MBE	WBE	SBE	TOTAL
FY2008 Agency SWaM Goals	0%	0%	0%	35% Overall SWaM Goal
FY08 Agency Actual Expenditures	4.14%	2.18%	32.90%	39.22%
FY2009 Projected Spending Goals (% of Discretionary Expenditures)	3%	2%	32%	37% Overall SWaM Goal

FY2007 Quarterly Expenditure History – **DMBE Certified Vendors**

Quarter	Total Expenditures	MBE Expenditures		WBE Expenditures		SBE Expenditures		Total SWaM
	Amount	Amount	%	Amount	%	Amount	%	%
*1 st	\$19,691,136	\$200,507	1.02%	\$129,052	0.66%	\$5,146,002	26.13%	27.81%
*2 nd	\$13,817,120	\$108,251	0.78%	\$98,003	0.71%	\$3,457,340	25.02%	26.51%
3 rd	\$17,767,834	\$162,421	0.91%	\$131,548	0.74%	\$4,945,097	27.83%	29.49%
4 th	\$18,289,698	\$512,316	2.80%	\$279,160	1.53%	\$5,314,706	29.06%	33.39%
FY07 TOTAL	\$69,565,789	\$983,495	1.41%	\$637,763	0.92%	\$18,863,145	27.12%	29.45%

**Note: FY07 1st & 2nd quarters have been adjusted to correct an error in the calculation of discretionary base. The spend breakdown for these two quarters will appear different than previously reported.*

FY2008 Quarterly Expenditure History - **DMBE Certified Vendors**

Quarter	Total Expenditures	MBE Expenditures		WBE Expenditures		SBE Expenditures		Total SWaM
	Amount	Amount	%	Amount	%	Amount	%	%
1 st	\$18,748,375	\$507,932	2.71%	\$463,037	2.47%	\$4,831,317	25.77%	30.95%
2 nd	\$22,942,182	\$1,598,210	6.97%	\$572,160	2.49%	\$5,800,996	25.29%	34.75%
3 rd	\$20,665,668	\$499,076	2.42%	\$341,358	1.65%	\$8,452,952	40.90%	44.97%
4 th	\$30,553,316	\$1,242,355	4.07%	\$645,131	2.11%	\$11,486,698	37.60%	43.77%
FY08 TOTAL	\$92,909,541	\$3,847,573	4.14%	\$2,021,686	2.18%	\$30,571,963	32.90%	39.22%

FY2008 Quarterly Expenditure History – **DMBE & ODU (Self Certified) SWaM Vendors**

Quarter	Total Expenditures	MBE Expenditures		WBE Expenditures		SBE Expenditures		Total SWaM
	Amount	Amount	%	Amount	%	Amount	%	%
1 st	\$18,748,375	\$669,192	3.57%	\$511,422	2.73%	\$5,297,822	28.26%	34.55%
2 nd	\$22,942,182	\$1,735,009	7.56%	\$587,421	2.56%	\$6,228,535	27.15%	37.27%
3 rd	\$20,665,668	\$672,651	3.25%	\$341,566	1.65%	\$8,813,945	42.65%	47.56%

4th	\$30,553,316	\$1,452,812	4.76%	\$700,646	2.29%	\$11,886,487	38.90%	45.95%
FY08 TOTAL	\$92,909,541	\$4,529,664	4.88%	\$2,141,055	2.30%	\$32,226,789	34.69%	41.87%

II. Designation of Procurement Champion

Rick Berry, CPPO
 Executive Director of Construction & Procurement Services
 Old Dominion University
 4401 Powhatan Avenue, Suite 111
 Norfolk, VA 23529-0308
 Phone: (757) 683-3109
 E-mail: rberry@odu.edu

III. SWaM Procurement Processes and Strategies

A. Summary of the Purchasing Process

Old Dominion University has implemented a combination of centralized and decentralized purchasing processes. The University utilizes the Commonwealth of Virginia's e-Procurement system, eVA, as its sole procurement tool. Therefore, eVA is the University's primary mechanism to; (1) solicit competition from DMBE certified small businesses, and (2) identify SWaM contract award information.

Note: Small businesses shall include businesses that have received the DMBE small business certification, which shall not exclude women-owned and minority-owned businesses when they have received DMBE small business certification.

Decentralized departments trained to use eVA have \$2,000 delegated purchasing authority for non-contract items. All other decentralized departments have \$1,000 purchasing authority for non-contract items. While eVA users issue eVA purchase orders, (called Direct Orders or DOs), non-eVA decentralized users issue Limited Purchase Orders (LPOs) for goods and services within their delegated purchasing authority.

B. Procurement Process

Mandatory Sources

The University recognizes and will use those mandatory sources defined in the *Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors*.

**Contract
Procurements**

When deemed to be advantageous, the University will utilize Old Dominion University, Commonwealth VaPP, and VASCUPP cooperative contracts.

Non-Contract and Non-Exempt Procurements

Non-eVA Users:

\$0 - \$1,000 Non-eVA departments shall utilize a Department of Minority Business Enterprise (DMBE) certified small business where available and when prices are fair and reasonable. Failure to do so will require support documentation and justification.

>\$1,000 All procurement transactions that exceed \$1,000 shall be submitted to Materiel Management via paper requisitions for appropriate processing. Procurement Officers are authorized to use independent judgment, analysis and eVA procurement tools available, and may award to a DMBE certified small business up to \$10,000 where available and when prices are fair and reasonable.

All requests between \$10,000 - \$50,000 shall be processed via eVA QuickQuote. eVA has proven to be the most efficient and effective tool to increase SWaM vendor participation in procurement processes.

The Small Purchase Charge Card (SPCC) may be used for transactions up to \$2,000.

eVA Users:

\$0 - \$2,000 eVA departments shall utilize a DMBE certified small business where available and when prices are fair and reasonable. Failure to do so will require support documentation and justification.

The Small Purchase Charge Card (SPCC) may be used for transactions up to \$2,000.

>\$2,000 eVA users shall submit electronic eVA requisitions to Materiel Management for review and appropriate processing. Procurement Officers are authorized to use independent judgment, analysis and eVA procurement tools available, and may award to a DMBE certified small business up to \$10,000 where available and when prices are fair and reasonable.

All requests between \$10,000 - \$50,000 shall be processed via eVA QuickQuote. eVA has proven to be the most efficient and effective tool to increase SWaM vendor participation in procurement processes.

\$50,001+ Materiel Management shall utilize eVA's "Virginia Business Opportunities" (VBO) to post all formal competitive solicitations.

Sole Source Sole source procurements shall be reviewed to ensure that only one source is practicably available. Sole source documentation is requested from University Departments, reviewed/approved by the appropriate Buyer, and the Executive Director of Construction & Procurement Services. Sole source procurements over \$100,000 require additional approval by the Vice President of Administration and Finance. All sole source procurements that exceed \$50,000 shall be posted on eVA's VBO website. The Materiel Management staff shall make every effort to encourage SWaM participation whenever available.

Emergency Emergency purchases exist when an immediate purchase is required to protect life, safety or property, to prevent substantial economic loss or prevent interruption of services. Emergency requests are generated by University departments, reviewed/approved by the appropriate Buyer, and the Executive Director of Construction & Procurement Services. All emergency procurements that exceed \$50,000 shall be posted on eVA's VBO website. The Materiel Management staff shall make every effort to encourage SWaM participation whenever available.

Subcontractors The University has developed language that requires bidders and offerors to provide their proposed plan of intent to utilize SWaM businesses during the performance of the contract. (See Attachment A) This information is required with bid/proposal submittals. No contract will be awarded unless this information is provided.

The University requires close-out reports from all vendors that have been awarded contracts indicating intent to utilize SWaM businesses as subcontractors during the performance of the contract. These reports indicate the amount of spend to SWaM vendors by the appropriate category. Reports are collected by the Department of Materiel Management. The University may deem the vendor to be in breach of contract and may withhold final payment or a part of the retainage should the vendor fail to provide required reports.

IV. SWaM Business Outreach

The University will:

- participate in SWaM Vendor Fair opportunities which shall include but is not limited to the following:
 - annual SWaMFest sponsored by the Virginia Association of State Colleges and University Purchasing Professionals (VASCUPP)
 - Virginia Business Opportunities Fair sponsored by the Virginia Minority Supplier Development Council (VMSDC)
 - Black Expo sponsored by Black Pages USA
 - Virginia Beach Minority Business Council Expo
 - Power Breakfast and Profits in Partnerships Luncheons sponsored by VMSDC
- Identify and encourage, SWaM vendors to:
 - register in eVA
 - register as a SWaM vendor with DMBE
 - meet centralized and decentralized purchasing staff
 - better understand University and Commonwealth procurement laws, policies and procedures
- conduct a SWaM/Procurement training program for all major decentralized buyers to better achieve SWaM goals.
- communicate and identify supplier diversity opportunities, mentor new vendors, make referrals, capture, and monitor utilization results.
- work with Department of General Services, Department of Minority Business Enterprise and others to obtain supplier diversity training for its procurement employees, and to develop new ideas to enhance SWaM involvement in procurement processes.
- compare the University's self-certified vendor database with the Commonwealth of Virginia Department of Minority Business Enterprise (DMBE) database and identify self certified vendors who are not DMBE certified. Mail information to these vendors encouraging them to complete the DMBE certification process in an effort to more accurately report the University's spend to DMBE SWaM certified vendors.
- mail information regarding SWaM certification to the University's term contractors who identified their business as small, woman-owned or minority-owned but are not currently certified through DMBE.
- contact local Chamber of Commerce offices and obtain new business registration information. Provide DMBE certification and eVA registration information to these new businesses.

V. Internal Monitoring Mechanisms

The University utilizes the Commonwealth of Virginia e-Procurement system, *eVA*, as its sole procurement tool. *eVA*, therefore, is the University's primary mechanism to:

- solicit competition from SWaM vendors
- identify SWaM contract award information.

The University will:

- include terms and conditions in all formal invitations for bid (IFB) and requests for proposals (RFPs) that will state SWaM goals, require prime contractors to state their intent to achieve these efforts, and include a mechanism to monitor actual spend to SWaM sub-contractors. (See Attachment B)
- collect and analyze prime contractor reports that will capture SWaM sub-contractor information in order to supplement BANNER SWaM spend reports.
- continue to evaluate the size and content of blanket and term contracts prior to solicitation to ensure they are appropriately bundled and that any negative impact on SWaM vendors is considered.
- research alternate sources (U.S. Communities, various municipal contracts, etc.) to identify additional contracts that have been awarded to SWaM vendors which the University is authorized to use.
- utilize BANNER as its primary source of information for SWaM spend reporting. SWaM sub-contractor reports will be developed to capture appropriate data for construction, services, and major goods contracts.
- to capture data and report based on
 - Department of Minority Business Enterprise's certified SWaM vendor list
 - vendor's W-9 self certification
 - GE MasterCard's transactions with DMBE certified SWaM vendors

The University will collect SWaM vendor spend data and compare to SWaM goal and monitor progress quarterly. Major decentralized departments will be made aware of their progress in achieving SWaM goals and will be counseled in areas where SWaM participation and awards may be increased.

VI. Compliance

The University certifies that its policies and procedures comply with the SWaM purchasing regulations and/or guidelines set forth in the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors.

Signature: _____

Date: _____

Robert L. Fenning
Vice President of Administration and Finance

**ATTACHMENT A
BID/PROPOSAL CONTRACT LANGUAGE**

Good-Faith Small, Woman and Minority (SWaM) Owned Business Participation Efforts:

1. The University is committed to (a) achieving the Commonwealth of Virginia's aspirational goal of forty percent (40%) SWaM participation for combined *prime contractor* and *subcontractor* spend, and (b) increasing participation of ***Department of Minority Business Enterprise (DMBE) Certified*** (i) small businesses, (ii) small woman-owned businesses, (iii) small minority-owned businesses, and (iv) businesses owned by service disabled veterans. The University also encourages Bidder's/Offeror's to provide for participation of small businesses, businesses owned by women and minorities, and businesses owned by disabled veterans through partnerships, joint ventures, subcontracts, or other contractual opportunities. Submission of a report of past efforts to utilize the goods and services of such businesses, and plans for involvement on this contract are required. By submitting a response, Bidder/Offeror certifies that all information provided in response to this solicitation is true and accurate. Failure to provide the information required by this solicitation may ultimately result in response being deemed non-responsive, and ultimately rejected.
2. While it is the University's intent to enter into an exclusive agreement with one Bidder/Offeror, whenever possible, all potential Bidders/Offerors are encouraged to subcontract any applicable services by partnering with qualified vendors that have also been certified as small, small woman-owned, small minority-owned, or service disabled veteran owned businesses through the Commonwealth of Virginia's Department of Minority Business Enterprise (DMBE).
3. In order for Bidders/Offerors to be given consideration for award of a contract, each response should include a statement setting forth:
 - a. The good faith SWaM owned business participation efforts which the Bidder/Offeror has undertaken in the past: and
 - b. The good faith SWaM owned businesses participation efforts which the Bidder/Offeror intends to undertake in connection with the performance of this contract; including name of firm, contact name and phone number, total dollar amount to be subcontracted, category type (small, women, or minority owned), type of product/services.
 - c. Requested statement(s) must be provided prior to any contract award.
4. If, in the statement submitted in response to subsection (a) and (b), the Bidder/Offeror indicates that it has not undertaken any good faith SWaM business participation efforts in the past and/or does not intend to undertake any such efforts in connection with the performance of this contract, the Bidder/Offeror must **also** submit a

statement setting forth the reason why it has not undertaken such efforts in the past and/or does not intend to undertake them in connection with the performance of this contract.

5. Any Bidder/Offeror that can qualify for certification through DMBE must do so prior to the award of any contract. The qualification information shall be evidenced by that information specified in the Bidder's/Offeror's completed and submitted W-9 form.

6. **Construction Related Procurements:**

Bidder/Offeror *that does not qualify for DMBE certification* shall be required to participate in the *GCPay Program*. This program will assist the *Bidder/Offeror* during the subcontractor "payment application" submittal and approval process. The *GCPay Program* will collect the (i) subcontract or name and federal tax identification number, (ii) payment information, (iii) DMBE certification information, and will then generate and submit to the University on a monthly basis BCOM's CO-12 form.

7. **Goods and Services related Procurements:**

Bidder/Offeror that does not qualify for DMBE certification shall be required to provide quarterly reports to the University's Contract Administrator. The reports shall identify the subcontractors used during the performance of any subsequent contract, as follows:

- a. For *DMBE Certified* subcontractors, quarterly reports verifying (i) those DMBE certified subcontractors being used, (ii) scope of goods and/or services being provided, (iii) payments to subcontract vendor(s) for current quarter **and** year-to-date totals, and (iv) percentage of same payments related to "overall" contract totals for current quarter **and** year-to-date totals; and
- b. For *non DMBE Certified* subcontractors providing services for contracts that exceed *\$200,000*, quarterly reports verifying (i) non-certified subcontractors being used, (ii) scope of goods and/or services being provided, (iii) payments to subcontract vendor(s) for current quarter **and** year-to-date totals, and (iv) percentage of same payments related to "overall" contract totals for current quarter **and** year-to-date totals.

Note: Failure to provide the quarterly reports as requested will result in non-payment to Contractor for any services provided and invoiced during that period, shall remain unpaid until such reports are provided, and unless provided will be considered a breach of contract.

8. For the purposes of this section, the following definitions shall apply:
 - a. **Good faith SWaM owned business participation efforts:** The sum total of efforts by a particular business to provide for equitable participation of SWaM subcontractors in the operations and contracts of such businesses.
 - i. For past efforts, this sum total shall be comprised of the record of minority participation over the past two (2) years through employment, retention and promotion; subcontracting or joint ventures in the private sector; or a combination thereof.

- ii. In connection with the performance of this contract, good faith efforts shall mean those measures which are proposed to allow equitable participation of SWaM subcontractors.
- b. Minority Owned Business Enterprise:** a business concern which is at least 51 percent owned by one or more minorities or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more minorities and whose management and daily business operations are controlled by one or more of such individuals.
- c. Minority Individual:** "Minority" means a person who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:
- i. **Asian Americans:** means all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Marinas, the Philippines, U. S. territory of the Pacific, India, Pakistan, Bangladesh and Sri Lanka and who are regarded as such by the community of which these persons claim to be a part.
 - ii. **African Americans:** means all persons having origins in any of the original peoples of Africa and who are regarded as such by the community of which these persons claim to be a part.
 - iii. **Hispanic Americans:** means all persons having origins in any of the Spanish speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who are regarded as such by the community of which these persons claim to be a part.
 - iv. **Native Americans:** means all persons having origins in any of the original peoples of North America and who are regarded as such by the community of which these persons claim to be a part or who are recognized by a tribal organization.
 - v. **Eskimos and Aleuts:** means all persons having origins in any of the peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia and who are regarded as such in the community of which these persons claim to be a part.
- d. Small Business Enterprise:** an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.

- e. **Woman Owned Business Enterprise:** a business concern which is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more women, and whose management and daily business operations are controlled by one or more of such individuals.

The Committee considered a resolution to authorize the University to receive up to \$34,779,000 to fund the Quad Student Housing Phase 2 project through the sale and issuance of 9c) Bonds under the Commonwealth of Virginia Higher Educational Institutions Bond Act of 2008. I so move its approval.

The following resolution was brought forth as a recommendation from the Administration and Finance Committee and was approved unanimously by all members present and voting (*Ampy, Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

**RESOLUTION OF THE RECTOR AND VISITORS OF
OLD DOMINION UNIVERSITY**

WHEREAS, there has been passed by the General Assembly of Virginia an act entitled "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2008" (the "2008 Act") which has been or is expected to be signed by the Governor;

WHEREAS, the 2008 Act may be repealed but the Project, as defined below, continues as an authorized project for bond financing through subsequent legislation (the 2008 Act and any such subsequent legislation, the "Act");

WHEREAS, pursuant to the Act, the Treasury Board of the Commonwealth of Virginia (the "Treasury Board") is authorized, by and with the consent of the Governor, to sell and issue bonds or bond anticipation notes of the Commonwealth of Virginia for the purpose of providing funds, with other available funds, for paying the cost of acquiring, constructing, renovating, enlarging, improving and equipping certain revenue-producing capital projects at certain institutions of higher learning of the Commonwealth and for paying issuance costs, reserve funds and other financing expenses (the "Financing Expenses"), all in accordance with the provisions of Section 9(c) of Article X of the Constitution of Virginia;

WHEREAS, such revenue-producing capital projects include a Quad Student Housing, Phase 2 (Capital Outlay Project Number 17342) (the "Project") for Old Dominion University (the "Institution"); and

WHEREAS, the Treasury Board is proposing to sell and issue bonds or bond anticipation notes pursuant to the Act for such revenue-producing capital projects, in one or more series;

NOW, THEREFORE, BE IT RESOLVED BY THE RECTOR AND VISITORS OF OLD DOMINION UNIVERSITY:

Section 1. The Board of Visitors of the Institution (the "Board") requests the Treasury Board to sell and issue bonds or bond anticipation notes ("BAN's") in an aggregate principal amount not to exceed \$34,779,000 to finance all or a portion of the costs of the Project plus Financing Expenses (individually, the "Project Bonds" or "Project Notes", collectively, the "Project Borrowing"). The Project Borrowing will be identified by amount by the State Treasurer upon issuance of any bonds or BAN's.

Section 2. The Board (a) covenants to fix, revise, charge and collect a room and board fee and other rates, fees and charges, for or in connection with the use, occupation and services of the Project and (b) pledges such rates, fees and charges remaining after payment of (i) the expenses of operating the Project and (ii) the expenses related to all other activities funded by the room and board fee ("Net Revenues") to the payment of the principal of, premium, if any, and interest on the Project Borrowing. The Board further covenants that it will fix, revise, charge and collect such rates, fees and charges in such amounts so that Net Revenues will at all times be sufficient to pay, when due, the principal of, premium, if any, and interest on the Project Borrowing and on any other obligations secured by Net Revenues (such payments collectively the "Required Payments"). The Project Borrowing shall be secured on a parity with such other obligations so secured by Net Revenues (other than any obligations secured by a prior right in Net Revenues). Any Net Revenues pledged herein in excess of the Required Payments may be used by the Institution for any other lawful purpose.

Section 3. It is hereby found, determined and declared that, based upon responsible engineering and economic estimates and advice of appropriate officials of the Institution, as shown on the Financial Feasibility Study attached hereto as Exhibit A, the anticipated Net Revenues pledged herein will be sufficient to pay the Required Payments so long as the aggregate amount of net debt service on the Project Borrowing actually payable in any bond year does not exceed the amounts assumed in the Financial Feasibility Study.

Section 4. The Board covenants that the Institution will furnish the Treasury Board its general purpose financial statements, within 30 days of their issuance and receipt, audited by a firm of certified public accountants or the Auditor of Public Accounts which shall include a schedule of revenues and expenditures for auxiliary enterprise systems. If Net Revenues are insufficient to pay Required Payments during such period, the Institution shall provide evidence of a plan to generate Net Revenues sufficient to make Required Payments in the future.

Section 5. The Board covenants that so long as any of the Project Notes are outstanding, the Institution will pay to the State Treasurer, not less than 30 days before each interest payment date, an amount estimated by the State Treasurer to be due and payable on such date as interest on the Project Notes. The Board covenants that so long as any of the Project Bonds are outstanding, the Institution will pay to the State Treasurer, not less than 30 days before each interest or principal payment date, the amount certified by the State Treasurer to be due and payable on such date as principal of, premium, if any, and interest on the Project Bonds.

Section 6. The Board covenants that the Institution will pay from time to time its proportionate share of all expenses incurred in connection with the sale and issuance of any series of bonds that includes Project Bonds or Project Notes and all expenses thereafter incurred in connection with the Bonds, including without limitation the expense of calculating any rebate to the United States of the earnings derived from the investment of gross proceeds of the Bonds, all as certified by the State Treasurer to the Institution.

Section 7. The Board covenants that the Institution will not take or omit to take any action the taking or omission of which will cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, including regulations issued pursuant thereto (the "Code"), or otherwise cause interest on the Bonds to be includable in the gross income of the owners thereof for federal income tax purposes under existing laws. Without limiting the generality of the foregoing, the Institution will pay from time to time its proportional share of any rebate to the United States of the earnings derived from the investment of the gross proceeds of the Bonds.

Section 8. The Board covenants that the Institution will proceed with due diligence to undertake and complete the Project and that the Institution will spend all of the available proceeds derived from the sale of the Project Borrowing for costs associated with the Project and appropriated for the Project by the General Assembly.

Section 9. The Board covenants that the Institution will not permit the proceeds of the Project Borrowing to be used in any manner that would result in (a) 5% or more of such proceeds being used in a trade or business carried on by any person other than a governmental unit, as provided in Section 141(b) of the Code, (b) 5% or more of such proceeds being used with respect to any output facility within the meaning of Section 141(b)(4) of the Code, or (c) 5% or more of such proceeds being used directly or indirectly to make or finance loans to any persons other than a governmental unit, as provided in Section 141(c) of the Code. The Institution need not comply with such covenants if the Institution obtains the written approval of the State Treasurer and an opinion of nationally recognized bond counsel acceptable to the Treasury Board that such covenants need not be complied with to prevent the interest on the Bonds from being includable in the gross income of the owners thereof for federal income tax purposes.

Section 10. The Board covenants that for so long as any of the Bonds are outstanding the Institution will not enter into any operating lease, management contract or similar agreement with any person or entity, other than a state or local governmental unit, for all or any portion of the Project without first obtaining the written approval of the State Treasurer and an opinion of nationally recognized bond counsel acceptable to the Treasury Board that entering into such agreement will not cause the interest on the Bonds to be included in the gross income of the owners thereof for federal income tax purposes.

Section 11. The Board covenants that for so long as any of the Bonds are outstanding, the Institution will not sell or dispose of any or any part of the Project without first obtaining the written approval of the State Treasurer and an opinion of nationally recognized bond counsel acceptable to the Treasury Board that such sale or disposition will not cause interest on the Bonds to be included in the gross income of the owners thereof for federal income tax purposes.

Section 12. The officers of the Institution are authorized and directed to execute and deliver all certificates and instruments and to take all such further action as may be considered necessary or desirable in connection with the sale and issuance of the Bonds.

Section 13. The Board acknowledges that the Treasury Board will rely on the representations and covenants set forth herein in issuing the Bonds, that such covenants are critical to the security for the Bonds and the exclusion of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes, that the Board will not repeal, revoke, rescind or amend any of such covenants without first obtaining the written approval of the Treasury Board, and that such covenants will be binding upon the Board so long as any of the Bonds are outstanding.

Section 14. This resolution shall take effect immediately.

The Committee considered a resolution to authorize the University to receive up to \$35,026,282 to fund the Powhatan Sports Center and the 49th Street Parking Garage through the sale and issuance of 9d) Bonds under the Virginia College Building Authority's pooled bond program. The following resolution was brought forth as a recommendation from the Administration and Finance Committee and was approved unanimously by all members present and voting (*Ampy, Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

**RESOLUTION OF THE BOARD OF VISITORS OF
OLD DOMINION UNIVERSITY**

WHEREAS, pursuant to Chapter 3.2, Title 23 of the Code of Virginia of 1950, as amended (the "Act"), the General Assembly of Virginia has authorized the Virginia College Building Authority (the "Authority") to develop a pooled bond program (the "Program") to purchase bonds and other debt instruments issued by public institutions of higher education in the Commonwealth of Virginia (the "Institutions") to finance or refinance the construction of projects of capital improvement specifically included in a bill passed by a majority of those elected to each house of the General Assembly of Virginia (the "Projects");

WHEREAS, the Authority intends to issue from time to time under the Program its Educational Facilities Revenue Bonds (Public Higher Education Financing Program) (the "Bonds") to finance the purchase of notes and other debt instruments issued by the Institutions to finance or refinance the Projects, all in the furtherance of the purposes of the Act and the Program;

WHEREAS, the Board of Visitors of Old Dominion University (the "Board") may from time to time wish to finance or refinance Projects of Old Dominion University (the "Participating Institution") through the Program;

WHEREAS, if the Participating Institution wishes to finance or refinance a Project through the Program, it will be necessary for the Participating Institution to enter into a Loan

Agreement (a “Loan Agreement”) between the Authority and the Participating Institution and, to evidence the loan to be made by the Authority to the Participating Institution pursuant to the Loan Agreement, to issue the Participating Institution’s promissory note (the “Note”), and pursuant to Section 23-19 of the Code of Virginia of 1950, as amended, and the Loan Agreement, the Authority will agree to issue its Bonds and to use certain proceeds of the Bonds to purchase the Note issued by the Participating Institution, and the Participating Institution will agree to use the proceeds of the Bonds received from the Authority to finance or refinance the construction of the Project and to make payments under the Loan Agreement and the Note in sums sufficient to pay, together with certain administrative and arbitrage rebate payments, the principal of, premium, if any, and interest due on that portion of the Bonds issued to purchase the Note;

WHEREAS, the Participating Institution now proposes to sell to the Authority the Participating Institution’s Note (the “2008 Note”) to be issued under a Loan Agreement (the “2008 Loan Agreement”) to finance or refinance from all or a portion of the proceeds of certain new money Bonds issued by the Authority in 2008, with appropriate series designation depending on their issuance date, (the “2008 Bonds”) a portion of the costs of construction and/or improvements of the Powhatan Sports Center and the 49th Street Parking Garage ([collectively,] the “2008 Project”), which has been authorized for bond financing by the General Assembly; and

WHEREAS, it is the desire of the Board to delegate to such Authorized Officers (as hereinafter defined) of the Participating Institution the authority to approve, on behalf of the Board, the forms of the 2008 Loan Agreement and the 2008 Note and, similarly, to authorize such Authorized Officers of the Participating Institution to execute, deliver and issue in the name of and on behalf of the Participating Institution, the 2008 Loan Agreement, the 2008 Note and any and all documents necessary or desirable to effectuate the financing or refinancing of all or a portion of the costs of the 2008 Project through the Program with the Authority and to facilitate the purchase of the 2008 Note by the Authority.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE PARTICIPATING INSTITUTION:

Section 1. The 2008 Project is hereby designated a Project to be undertaken and financed or refinanced by the Authority and, accordingly, the Acting President and Vice President of Administration and Finance of the Participating Institution (collectively, the “Authorized Officers”), are each hereby delegated and invested with full power and authority to approve the forms of the 2008 Loan Agreement and 2008 Note, and any pledge to the payment of the 2008 Note of the Participating Institution’s total gross university sponsored overhead, unrestricted endowment income, tuition and fees, indirect cost recoveries, auxiliary enterprise revenues, general and nongeneral fund appropriations and other revenues not required by law or by previous binding contract to be devoted to some other purpose, restricted by a gift instrument for another purpose or excluded from such pledge as provided in the 2008 Loan Agreement, and such approval is hereby authorized, subject to the provisions of Section 3 hereof.

Section 2. Subject to the provisions of Section 3 hereof, the Authorized Officers are each hereby individually delegated and invested with full power and authority to execute, deliver

and issue, on behalf of the Board, (a) the 2008 Loan Agreement and the 2008 Note with the approval of such documents in accordance with Section 1 hereof by any such officer evidenced conclusively by the execution and delivery of the 2008 Loan Agreement and 2008 Note, respectively, and (b) any and all other documents, instruments or certificates as may be deemed necessary or desirable to consummate the financing or refinancing of all or a portion of the costs of the 2008 Project through the Program, the construction of the 2008 Project and the Participating Institution's participation in the Program, and to further carry out the purposes and intent of this Resolution. The Authorized Officers are directed to take such steps and deliver such certificates prior to the delivery of the 2008 Note as may be required under existing obligations of the Participating Institution, including bond resolutions relating to the Participating Institution's outstanding general revenue pledge bonds.

Section 3. The authorizations given above as to the approval, execution, delivery and issuance of the 2008 Loan Agreement and the 2008 Note are subject to the following parameters: (a) the principal amount to be paid under the 2008 Note allocable to each Project constituting part of the 2008 Project, together with the principal amount of any other indebtedness with respect to such Project, shall not be greater than the amount authorized for such Project by the General Assembly of Virginia, as the same may be adjusted as required or permitted by law, (b) the aggregate principal amount of the 2008 Note shall in no event exceed \$35,026,282, as the same may be so adjusted, (c) the interest rate payable under the 2008 Note shall not exceed a "true" or "Canadian" interest cost more than 50 basis points higher than the interest rate for "AA" rated securities with comparable maturities, as reported by Delphis Hanover, or another comparable service or index, on the date that the interest rates on the 2008 Note are determined, taking into account original issue discount or premium, if any, (d) the weighted average maturity of the principal payments due under the 2008 Note shall not be in excess of 20 years, (e) the last principal payment date under the 2008 Note shall not extend beyond the period of the reasonably expected average weighted economic life of the 2008 Project, and (f) subject to the foregoing, the actual amount, interest rates, maturities, and date of the 2008 Note shall be approved by an Authorized Officer, which approval will be evidenced by the execution of the 2008 Note.

Section 4. The Board acknowledges, on behalf of the Participating Institution, that if the Participating Institution fails to make any payments of debt service due under any Loan Agreement or Note, including the 2008 Loan Agreement and the 2008 Note, the Program authorizes the State Comptroller to charge against the appropriations available to the Participating Institution all future payments of debt service on that Loan Agreement and Note when due and payable and to make such payments to the Authority or its designee, so as to ensure that no future default will occur on such Loan Agreement or Note.

Section 5. The Board agrees that if the Authority determines that the Participating Institution is an "obligated person" under Rule 15c2-12 of the Securities and Exchange Commission with respect to any issue of Bonds, the Participating Institution will enter into a continuing disclosure undertaking in form and substance reasonably satisfactory to the Authority and the Participating Institution and will comply with the provisions and disclosure obligations contained therein.

Section 6. This resolution shall take effect immediately upon its adoption.

At its meeting in December, the Board approved a resolution to reimburse Webb University Center Improvement Expenditures up to \$1,000,000 from subsequent Bond proceeds. The Appropriations Act passed earlier this year did not include 9c or 9d bond authority for the Webb Center Project. However, the University is resubmitting such a request for consideration in the upcoming Technical Session. The following resolution would permit work to commence in the spring in order to complete work by next Fall semester. The following resolution was brought forth as a recommendation from the Administration and Finance Committee and was approved unanimously by all members present and voting (*Ampy, Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

**RESOLUTION OF THE BOARD OF VISITORS OF
OLD DOMINION UNIVERSITY
DECLARING THE INTENTION TO REIMBURSE
THE COST OF CERTAIN EXPENDITURES**

WHEREAS, Old Dominion University (the “Institution”) has undertaken the renovation of its Webb Center, which will create a new east-west corridor including a new west entrance, and reprogram the bookstore space into more flexible offices and meeting spaces (the “Project”); and

WHEREAS, the Institution has made or will make expenditures (the “Expenditures”) in connection with the Project; and

WHEREAS, the Institution may determine that the funds advanced and to be advanced to pay Expenditures will be reimbursed to the Institution from the proceeds of one or more debt obligations to be issued by or on behalf of the Institution (the “Indebtedness”); provided that, pursuant to federal Treasury Regulations Section 1.150-2(c), any such reimbursement generally must be made no later than 18 months after the date on which any expenditure is made.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF VISITORS OF THE INSTITUTION:

1. The Board of Visitors of the Institution hereby adopts this declaration of official intent under Treasury Regulations Section 1.150-2 and declares that the Institution intends to reimburse itself, in accordance with such Section 1.150-2, with the proceeds of Indebtedness for Expenditures made on, after or within 60 days prior to the date of the adoption of this Resolution with respect to the Project, except that Expenditures made more than 60 days prior to the date hereof may be reimbursed as to certain *de minimis* or preliminary expenditures described in Treasury Regulations Section 1.150-2(f) and as to other expenditures permitted under applicable Treasury Regulations.
2. The maximum principal amount of Indebtedness expected to be issued for the Project is \$1,000,000.

3. This Resolution shall take effect immediately upon its adoption.

The Committee considered a Resolution to approve reimbursement of the Powhatan Sports Center expenditures up to \$2,000,000 from subsequent Bond proceeds. This action is preparatory to any necessary additional improvements to Foreman Field, the new Crew facility, or other Athletic facility which may be necessary prior to the sale of 9d bonds next Fall. I so move for approval. The following resolution was brought forth as a recommendation from the Administration and Finance Committee and was approved unanimously by all members present and voting (*Ampy, Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

**RESOLUTION OF THE BOARD OF VISITORS OF
OLD DOMINION UNIVERSITY
DECLARING THE INTENTION TO REIMBURSE
THE COST OF CERTAIN EXPENDITURES**

WHEREAS, Old Dominion University (the "Institution") has undertaken the construction of its Powhatan Sports Center (the "Project"); and

WHEREAS, the Institution has made or will make expenditures (the "Expenditures") in connection with the Project; and

WHEREAS, the Institution may determine that the funds advanced and to be advanced to pay Expenditures will be reimbursed to the Institution from the proceeds of one or more debt obligations to be issued by or on behalf of the Institution (the "Indebtedness"); provided that, pursuant to federal Treasury Regulations Section 1.150-2(c), any such reimbursement generally must be made no later than 18 months after the date on which any expenditure is made.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF VISITORS OF THE INSTITUTION:

1. The Board of Visitors of the Institution hereby adopts this declaration of official intent under Treasury Regulations Section 1.150-2 and declares that the Institution intends to reimburse itself, in accordance with such Section 1.150-2, with the proceeds of Indebtedness for Expenditures made on, after or within 60 days prior to the date of the adoption of this Resolution with respect to the Project, except that Expenditures made more than 60 days prior to the date hereof may be reimbursed as to certain *de minimis* or preliminary expenditures described in Treasury Regulations Section 1.150-2(f) and as to other expenditures permitted under applicable Treasury Regulations.
2. The maximum principal amount of Indebtedness expected to be issued for the Project is \$2,000,000.

3. This Resolution shall take effect immediately upon its adoption.

Vice President Robert Fenning briefed the Committee on the University's compliance with the Board's Debt Management Policy. The University has undertaken a considerable number of debt-supported projects to provide necessary infrastructure such as new student residences, parking facilities, and new/renovated athletic and recreational facilities. Annual debt service will increase from \$14M in last fiscal year to approximately \$17.8M in FY08 and \$23.2M in FY2010. The corresponding Debt Burden ratio will be 5.73% this year and projected to be 6.82% in FY2010. The Debt Management Policy establishes a 7% Debt Burden Ratio "cap" unless approval to exceed this cap is provided by the Board.

Mr. Fenning noted in his report that the "base" infrastructure will be in place effective with Fall, 2009, and that there are several smaller debt-supported projects proposed for the period of FY2010 – FY2014. These include renovations to Webb University Center, a Student Health Center facility, and smaller athletic projects associated with the initiation of new intercollegiate sports. These follow-on debt-supported projects will be phased to keep the Debt Burden Ratio below 7% and actually reduce the debt/FTE over this period.

Mr. Fenning also emphasized the implications of this debt management report and, especially, the impact of two consecutive fiscal years of state budget cuts (accompanied by the significant growth of enrollments during the past several years). While the University has achieved its non-General Fund projected enrollments over the past several years, the state budget cuts have actually reduced General Funds per In-state FTE from \$7,370 in FY2007 to \$7,100 in the current year prior to any budget cut. If a 5% cut is experienced, this will reduce the General Funds per In-state FTE to \$6,571 and a 10% cut to \$6,225 (a loss of over \$1,030 since FY2007). Even with the increased non-General Fund revenue growth through increases in tuition and enrollment growth, the Total Educational & General (E&G) Appropriation per FTE will have dropped from \$11,635 in FY2007 to as much as \$10,837 with a 10% budget cut. When this last amount is adjusted for inflation, the reduction between FY2007 and the current fiscal year would be over \$1,300 per FTE. In short, the lack of state General Funds to support the University and the significant growth in enrollment limits the institution's capacity for further growth and taking on any large-scale debt.

On a positive note, the Board approved amendments to the master leases for the University Village Apartments and North Parking Deck necessary for the Real Estate Foundation to refinance these projects. This refinancing required an underlying credit rating to be issued for the University as well. Our staff met with Standard & Poor's in early August and provided considerable follow-on data at their request. We were notified formally last week, that S&P has upgraded the University's rating from "A" to "A+". The rationale for this was, despite a considerable increase in debt service, the University has provided effective financial management and met or exceeded the benchmarks established 30 months ago when the "A" rating was established.

Mr. Dale Feltes, Director of Design and Construction, briefed the Committee on the preliminary designs of the Student Success Center. He explained that, as the project was developing, the University had also been investigating creation of a Learning Commons. The Learning Commons concept is the result of several universities' efforts to fuse traditional library services and space with the new digital media and other IT-based tools. Essentially, a Learning Commons is a media-rich study and collaborative space for students, with high volume access to on-line resource material. As investigation of the concept progressed, it became apparent to Old Dominion University that it was a natural complement to the University College, the heart of the Student Success Center project, and would most logically be situated in the Perry Library. After further study, the University sought and received permission to incorporate a Learning Commons into the Student Success Center project within the original space and funding limits set for the project by the Commonwealth.

In his report to the Committee, Vice President Fenning provided information on the opening of the Fall Semester and provided a status report on the University Village. The Committee then received the standing reports from Mr. Dale Feltes, Director of Design and Construction, and Mr. Rick Massey, Associate Vice President for Foundations, on the progress of capital outlay projects and the status of investments, respectively..

REPORT OF THE NOMINATING COMMITTEE AND ELECTION OF OFFICERS

The Rector called on Mr. Hixon for the report of the Nominating Committee. Mr. Hixon reported that the Nominating Committee, comprised of himself, Frank Batten, and Katherine A. Treherne, recommends the following slate of officers of the Board of Visitors for the 2008-2010 term:

RECTOR -	Ross A. Mugler
VICE RECTOR -	Harold W. Gehman, Jr.
SECRETARY -	Linda L. Forehand

The Rector asked for additional nominations from the floor. Hearing none, a motion was made by Mr. Batten to elect the slate of officers suggested by the Committee for the 2008-2010 term. The motion was seconded Mr. Mr. Kornblau and was approved unanimously by all members present and voting (*Ampy, Batten, Chick, Forehand, Gehman, Hall, Hixon, Kirk, Kornblau, Mugler, Stallings, Treherne*).

OLD/UNFINISHED BUSINESS

The Rector asked if there was any old or unfinished business to come before the Board. There was none.

NEW BUSINESS

The Rector asked if there was any new business to come before the Board. Rector-elect Mugler thanked Rector and Mrs. Jacobson on behalf of the Board for all they have done in support of Old Dominion University. The Rector congratulated the new officers and thanked the Board for their support.

With no further business to be discussed, the meeting was adjourned at 3:10 p.m.