

Issue Analysis Form



Date: October 27, 2022
Authorization to Apply –
Department of Housing and
Community Development's
Industrial Revitalization Fund
Planning Grant

Item:

Lead Department(s): Economic Development

Contact Person(s): Stacey English; Yoti Jabri

Description and Current Status

The Economic Development and Tourism Department is seeking authorization to apply for a Department of Housing and Community Development's Industrial Revitalization Fund Planning Grant. The Department of Housing and Community Development has released these grants to help bolster early-stage Industrial Revitalization Fund projects, enabling feasibility studies and other planning-related activities for potential IRF applicants.

The Economic Development and Tourism Department would like to apply for this grant to further the redevelopment at Exit 45. We would like to apply for this grant to cover the cost of a master plan for Exit 45, outlining the highest and best use for vacant and blighted properties at the exit. We also would like to conduct further studies, including a real estate Pro-forma and construction estimates, on the former Stephen Kent property.

The department has received various quotes for this type of work. We are prepared to work with the procurement office to correctly procure a firm if we are awarded the grant funding.

This grant program does not require a match from the locality, however, we will include the funds spent on the Continental Property and the Exit 45 Strategic Vision and Action Plan to show recent investments by the County to the Exit. The application is due November 4, 2022.

Based on the quotes received, we would like to request no more than \$100,000 in grant funding. The grant funding would cover the cost of the master plan and additional studies conducted on the former Stephen Kent property. Attached is one quote for the master plan of the exit. We are still working with consultants to receive quotes for additional studies on the Stephen Kent property.

Board Action Requested:

Authorize the Economic Development and Tourism Department to submit an application for the Department of Housing and Community Development's Industrial Revitalization Fund Planning Grant, totaling \$100,000 in grant funding.

A draft resolution for the authorization is attached for Board consideration.

Government Path

- Does this require IDA action? Yes No
- Does this require BZA action? Yes No
- Does This require Planning Commission Action? Yes No
- Does this require Board of Supervisors action? Yes No
- Does this require a public hearing? Yes No
- If so, before what date? Yes No

Fiscal Impact Statement

There is no expected fiscal impact on the County. If awarded, funds will be placed in the Economic Development account as reimbursement for eligible grant expenses.

County Impact

Authorizing the Economic Development team to apply for this grant would provide funding to perform necessary studies to further the redevelopment of Exit 45. Using grant funding to cover these expenses allows for more flexibility in the Economic Development budget to perform other Economic Development activities.

Notes

Board of Supervisors
County of Prince George, Virginia

Resolution

At a regular meeting of the Board of Supervisors of the County of Prince George held in the Boardroom, Third Floor, County Administration Building, 6602 Courts Drive, Prince George, Virginia this 25th day of October, 2022:

Present:

Vote:

Marlene J. Waymack, Chair
Donald R. Hunter, Vice-Chair
Floyd M. Brown, Jr.
Alan R. Carmichael
T. J. Webb

A-4

On motion of _____, seconded by _____, which carried unanimously, the following Resolution was adopted:

RESOLUTION; AUTHORIZE THE ECONOMIC DEVELOPMENT AND TOURISM DEPARTMENT TO COMPLETE A GRANT APPLICATION TO THE VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR THE INDUSTRIAL REVITALIZATION FUND GRANT.

WHEREAS, the Economic Development and Tourism Department is requesting the support of the Prince George County Board of Supervisors to apply for an Industrial Revitalization Fund grant totaling no more than \$100,000 through the Virginia Department of Housing and Community Development, due for submission by Nov 4, 2022; and

WHEREAS, the Economic Development and Tourism Department will apply for this grant to further the redevelopment efforts at Exit 45 by conducting a master plan of the Exit and conducting further studies of the Stephen Kent property. We are requesting no more than \$100,000 in grant funding.

WHEREAS, the grant requires no match from the County.

BE IT RESOLVED, That the Board of Supervisors of the County of Prince George this 25th day of October, 2022, does hereby authorize the submission of one grant application totaling no more than \$100,000 to the Virginia Department of Housing and Community Development's Industrial Revitalization Fund Planning Grants.

BE IT FURTHER RESOLVED, That a copy of this Resolution shall be retained as support authorizing the grant application to the Virginia Department of Housing and Community Development.

A Copy Teste:

Jeffrey D. Stoke
County Administrator



Prince George County Tourism Zone / Exit 45 Master Planning and Preliminary Engineering Services

October 14, 2022

SUBMITTED BY:

Dewberry

Kevin Pennock, PE, LEED AP
4805 Lake Brook Drive, Suite 200
Glen Allen, VA 23060-9278
804.205.3338

SUBMITTED TO:

Prince George County

Attn: Stacey English, Economic
Development Specialist
6602 Courts Drive
Prince George, VA 23875
804.722.8609

INTRODUCTION

We appreciate the opportunity to submit this proposal to provide professional land planning and engineering services for the development of the Exit 45 Tourism Zone. The subject area is generally identified in a report entitled “Exit 45: A Strategic Vision and Action Plan”, prepared by Sanford Holshouser for Prince George County in 2021, and provided to Dewberry as a reference.

We are proud to have some of the most dedicated and talented professionals within our industry at Dewberry. Our teams are accustomed to providing solutions to support the completion of small, short duration tasks where response times are critical, as well as comprehensive projects which require a broader vision and a structured management approach. We look forward to working with you on this project.

PROJECT UNDERSTANDING

It is our understanding that Prince George County (County) wishes to prepare a Master Plan to develop the referenced Site in its highest and best use as a retail, hospitality, and green space zone that will eventually lead to residential development to attract tourists that travel the I-95 corridor through the County. The development program for the Site includes parcels already owned by the County as well as ones that are currently privately owned.

SCOPE OF SERVICES

PHASE I: PRE-PLANNING ACTIVITIES

Planning / research / Existing Investigations and Documentation

Duration: Approximately one month

1. ZONING, LAND USE, UTILITY, AND GOVERNMENT AGENCY INVESTIGATION

Dewberry will request the available records and plans from the utility companies and Prince George County agencies to determine the presence and approximate location of existing utilities within the development area. Services outlined herein do not include test pitting or other field investigation to determine accurate location and depth of underground utility lines.

Dewberry will coordinate with the County to obtain, review, and analyze the information that is either publicly available or prepared by the County’s other consultants such as aerial photographs, environmental, waterways/wetlands, topographical, roadway (local and regional) maps. Dewberry will review local land use requirements, environmental overlays, watershed, and storm water and current entitlement prepared previously by others. Dewberry will review the current plans in order to evaluate items such as:

- a. Overall land uses and relationships;
- b. Pedestrian, bicycle, and vehicular traffic;
- c. Spatial form of the land plan and the street network;
- d. The natural features of the community;
- e. The infrastructure network;
- f. Architecture character for all building types;
- g. Common area amenities, public space designs and natural areas;
- h. Entrance layout and entrance statement potential;
- i. Phasing approach;
- j. Construction schedule;
- k. Any brand, signage, logo or other marketing materials prepared for the project;
- l. Destination development strategy and staging.

Other studies, plans and information prepared by the County or their consultants will be reviewed during this phase. The intent is not to duplicate any prior relevant work but to ensure we are knowledgeable about the past work, or scheduled work by others, and how it informs the County’s current thinking, in regards to

market precedents and trends, project program considerations and sustainability practices and measures that may be incorporated into the development. During this phase, Dewberry will work with the County to clarify what new research or reports may need to be provided. Information will be presented on the Opportunities and Constraint map outlined in task E015. No deliverables are included in this task but additional exhibits can be provided at the client request.

2. BASE MAPPING

b. Dewberry will prepare a base sheet of existing conditions utilizing available information such as County GIS, NWI (wetlands), FEMA flood maps, VGIN topography and other resources. No field survey is proposed for this project.

The reports and plan will be utilized for schematic design planning during the site design and layout. The plans prepared under this task are for client use only and will not be submitted to or for approval by the governing agency/department

3. OPPORTUNITIES AND CONSTRAINTS MAP

Based on the analysis of the above-mentioned data, and information gathered from the previous report, Dewberry will prepare a comprehensive diagram illustrating the various development and place making opportunities and constraints that the subject site presents. The diagram(s) will also identify specific areas of the site that, based on the base information, appear to be most suitable for development and those that contain characteristics that could discourage development activity (High, Medium, Low priority). It is anticipated that this work will primarily be used to generate preliminary conceptual site plan sketches and scenarios.

A summary of key findings and conclusions that will inform our recommendations but also will guide the visioning phase may be relayed verbally in team meetings, telephone calls or work sessions, or in brief word document outlines or email communication.

PHASE 1 FEE: \$19,500.00 Lump Sum

PHASE II: DRAFT PRELIMINARY MASTER DEVELOPMENT PLAN

Duration: Approximately one month

1. INITIAL CONCEPTUAL SITE LAYOUTS

Dewberry will prepare up to two (2) conceptual site layout plans for the project area based on programming requirements from the County. The plan will be prepared at a scale of 1" = 100' or greater and will include the following information:

- Location of proposed buildings utilizing footprints provided/suggested by the County;
- Parking lot, internal circulation drive aisles;
- Existing topography from published information;
- Vehicular and pedestrian access ways;
- Open space, plazas, and courtyards;
- Preliminary storm water management locations (as applicable);
 - SWM areas will not be formally designed or sized; we will use engineering judgement from past similar-sized projects to set aside space for stormwater management.
- Existing site environmental features.

The quoted fee includes two (2) revisions to the conceptual site layouts for a total of four (4) layouts to be completed or revised as requested by the County. Additional revisions will be performed on an hourly basis as part of the revisions task E030.a., if requested.

2. INITIAL PRELIMINARY ENGINEERING ANALYSIS

Dewberry will provide preliminary engineering design utilizing the Conceptual Layout Plans outlined above. The analysis will enable Dewberry to make recommendations that ultimately will be incorporated into the site layout for conceptual planning and design.

Conceptual engineering design services include:

- Utility Design: Dewberry will prepare horizontal layouts for both sanitary and storm drains. Dewberry will also preliminary layout locations for public utility easements so that both horizontal spacing and vertical design issues can be assessed;
- Grading Design: while no formal grading plans will be prepared, Dewberry will utilize available topographic data to inform the master plan designs so they are buildable;
- Conceptual Storm water Management Design: Dewberry will determine approximate locations for storm water management facilities. This information will be used to determine the feasibility and methods of providing storm water management for each site layout.
- Landscape Design: Dewberry will provide a preliminary landscape concept, reflecting zoning requirements and representative plant species. No formal landscape plans will be prepared.

Conceptual engineering design will be utilized in the creation of the draft master development plan. This task does not include the preparation of final design documents for agency submittal and review. If required, these services will be the subject of a future proposal.

3 REVISIONS TO INITIAL DRAFT PRELIMINARY MASTER DEVELOPMENT PLAN CONCEPT LAYOUTS

Dewberry will revise the conceptual site layout plan based on feedback and direction from the County, and input and feedback obtained during meetings.

4. CLIENT COORDINATION AND INTERNAL TEAM MEETINGS

Dewberry will provide general planning and engineering consultation as part of the phase II draft preliminary master development plan activities. Client coordination beyond that scoped in the phase II draft preliminary master development plan for each service line will be performed as part of this item including, but is not limited to:

- Preparation of project schedules, status reports, and other documents and plans as requested by the client.
- Project coordination meetings with client or client's designated representatives.
- Preparing and packaging print orders requested by the client or client's designated representative.

5. REIMBURSABLE AND REPRODUCTION EXPENSES

All reimbursable expenses associated with the draft preliminary master development plan activities phase will be billed in accordance with Item 8 of Dewberry Standard Terms and Conditions. Additional expenses will be the subject to a change order to this proposal item.

FEE: \$250.00 Estimate

PHASE 2 FEE: \$24,750.00 LUMP SUM (+ Reimbursables \$250 est.)

Assumptions

1. The scope of work and fees outlined herein include services to prepare the documents for County use and in consultation for stakeholder input and review. Additional revisions outside of this scope can be provided as additional services with a separate proposal.
2. The work included in this proposal is limited to the area identified in the Sanford Holshouser report, unless noted otherwise.
3. No formal design or zoning submissions are included in the scope of this project.
4. This proposal excludes detailed engineering design and permitting services. Dewberry is able to provide these services if requested by the County, as part of a separate contract.

This proposal complies with the regulations and requirements of Prince George County, the Commonwealth of Virginia, and the County requirements as of this date. Any modification to these requirements or to the ordinance and regulations which would require additional work to be performed by Dewberry will be negotiated as an additional service. Furthermore, all work shall be performed pursuant to the conditions defined by Attachment B, Standard Terms and Conditions, attached hereto and made a part of this contract.

Exclusions

The following services are specifically excluded from the scope of this contract:

- Services associated with environmental permit acquisition from State or Federal Agencies
- Application fees to regulatory agencies
- Gas, power, telephone, etc. design services
- 100-year flood plain study
- Underground tanks of any kind, e.g. fuel, oil, etc.
- Wetlands delineation, confirmation, mitigation plans or permitting
- Soil testing, percolation testing
- Off-site utility, roadway or drainage designs other than those specifically outlined in this proposal
- MEP engineering services
- Transportation studies or engineering
- Structural engineering
- Stream channel improvement and dam breach analysis
- Building permit application and/or processing
- Irrigation design
- Field survey
- Existing Floodplain Plan delineation and approval

Dewberry Engineers Inc. is an equal opportunity employer and complies with Section 202 of Executive Order 11246, as amended.

Dewberry Engineers Inc. Standard Terms and Conditions are contained in Attachment B, which is annexed to this proposal and incorporated into it by reference. The Client should read carefully the Standard Terms and Conditions to assure that these provisions of the proposal are fully understood. In the event the Client accepts this proposal, please execute both the original and the enclosed copy of this proposal and send either the executed original or the executed copy of this proposal to this office. It is a Dewberry policy that we must receive a copy of the signed contract before any work will begin.

Sincerely,

Dewberry Engineers Inc.



Kevin Pennock, PE, LEED AP
Senior Associate, Senior Project Manager

Attachments

B. Standard Terms and Conditions – 03/2019

I hereby authorize Dewberry Engineers Inc. to proceed in accordance with the afore-described proposal.

Print (Type) Individual, Firm or Corporation Name of Party Legally Responsible for Payment

Signature of Authorized Representative

Date

Print (Type) of Authorized Representative and Title

**ATTACHMENT B
STANDARD TERMS AND CONDITIONS**

These Standard Terms and Conditions ("STCs") are incorporated by reference into the foregoing agreement or proposal, along with any future modifications or amendments thereto made in accordance with Paragraph 23 below (the "Agreement") between Dewberry ("we" or "us" or "our") and its client ("you" or "your") for the performance of services as defined in our proposal ("Services"). These STCs are fully binding upon you just as if they were fully set forth in the body of the Agreement, and shall supersede any term or provision elsewhere in the Agreement in conflict with these STCs.

1. **Period of Offer.** Unless we decide, in writing, to extend the period for acceptance by you of our proposal, you have 90 days from our proposal date to accept our proposal. We have the right to withdraw the proposal at any time before you accept. Delivery of a signed proposal—whether original or copy—to us constitutes your acceptance of the proposal, including attachments expressly incorporated into the proposal by reference. The proposal and incorporated attachments shall constitute the entire Agreement between you and us. If you request us to render Services before you deliver a signed proposal to us, and we render Services in accordance with the proposal, you agree that the proposal and these STCs constitute the Agreement between you and us even if you fail to return a signed proposal to us.
2. **Scope of Services.** For the fee set forth in the Agreement, you agree that we shall only be obligated to render the Services expressly described in the Agreement. Our Services shall not be construed as providing legal, accounting, or insurance services. Unless the Agreement expressly requires, in no event do we have any obligation or responsibility for:
 - a. The correctness or completeness of any document which was prepared by another entity.
 - b. The correctness or completeness of any drawing prepared by us, unless it was properly signed and sealed by a registered professional on our behalf.
 - c. Favorable or timely comment or action by any governmental entity on the submission of any construction documents, land use or feasibility studies, appeals, petitions for exceptions or waivers, or other requests or documents of any nature whatsoever.
 - d. Taking into account off-site circumstances other than those clearly visible and actually known to us from on-site work.
 - e. The actual location (or characteristics) of any portion of a utility which is not entirely visible from the surface.
 - f. Site safety or construction quality, means, methods, or sequences.
 - g. The correctness of any geotechnical services performed by others, whether or not performed as our subcontractor.
 - h. The accuracy of earth work estimates and quantity take-offs, or the balance of earthwork cut and fill.
 - i. The accuracy of any opinions of construction cost, financial analyses, economic feasibility projections or schedules for the Project.Should shop drawing review be incorporated into the Services, we shall pass on the shop drawings with reasonable promptness. Our review of shop drawings will be general, for conformance with the design concept of the Project to which this Agreement relates ("Project") and compliance with the information given in the construction documents, and will not include quantities, detailed dimensions, nor adjustments of dimensions to actual field conditions. Our review shall not be construed as permitting any departure from contract requirements nor as relieving your contractor of the sole and final responsibility for any error in details, dimensions or otherwise that may exist.
3. **Your Oral Decisions.** You, or any of your directors, officers, partners, members, managers, employees or agents having apparent authority from you, may orally: (a) make decisions relating to Services or the Agreement; (b) request a change in the scope of Services under the Agreement; or (c) request us to render additional Services under the Agreement, subject to our right to require you to submit the request in writing before your decision or request shall be considered to have been effectively made. You may, at any time, limit the authority of any or all persons to act orally on your behalf under this Paragraph 3, by giving us seven (7) days advance written notice.
4. **Proprietary Rights.** The drawings, specifications and other documents prepared by us under this Agreement are instruments of our service for use solely for the Project and, unless otherwise provided, we shall be deemed the author of these documents and shall retain all common law, statutory, and other reserved rights, including the copyright and rights to any Dewberry trademarks. Upon payment in full for our Services, you shall be permitted to retain copies, including reproducible copies of our instruments of service for information and reference for the Project. Our instruments of service shall not be used by you or others on other projects for any reason or for completion or modification of this Project by other professionals, unless you enter into a written agreement with us allowing for such use. Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication inconsistent with our reserved rights. You shall defend, indemnify and hold us harmless, and release us, from any and all liability, loss, damages, claims and demands for loss, damages, property damages or bodily injury, arising out of any use (including, without limitation, the means or media of transfer, possession, use, or alteration) of our instruments of service by (i) you, if such use is inconsistent with our reserved rights or this Paragraph 4, or (ii) any third party, regardless of the manner of use, if such third party received our instruments of service directly or indirectly from you (including if we or others have transmitted such instruments of service to the third party at your request or direction, for your benefit, or, and without limiting the foregoing, pursuant to a contractual obligation that is directly or indirectly derived (or flowed down) from a contract to which you have privity).
5. **Fees and Compensation.** If you request us to render services not specifically described in the Agreement, or, if we or anyone in our employ, is called upon to be deposed or to testify in a matter in which we are not a named party, that relates to the Project, you agree to compensate us for such services in accordance with the hourly rates as set forth on Attachment A of this Agreement or in any subsequently effective schedule, unless otherwise agreed in writing. If no compensation rate is set forth on Attachment A, or through written agreement between you and us, we shall be compensated for such services at our then current hourly rates. We may unilaterally increase our lump sum or unit billing rates on each anniversary of your acceptance of this Agreement by as much as five percent or the percentage increase in the CPI-W (U.S. Department of Labor Consumer Price Index-Washington), whichever is greater. Hourly rates are subject to periodic revision at our discretion.
6. **Period of Service.** The provisions of this Agreement and the compensation provided for under the Agreement have been established in anticipation of the orderly and continuous progress of the Project. Our obligation to render the Services will extend only for that period which may reasonably be required to complete the Services in an orderly and continuous manner and we may then, at our sole option, terminate the Agreement.
7. **Reimbursable Expenses.** Unless the Agreement otherwise provides, you shall reimburse us, or our affiliates, for all expenses we incur to render the Services for you under this Agreement, plus fifteen percent. We may submit invoices for reimbursable expenses separately from invoices for Services.
8. **Payment Terms.** We may submit invoices at any time to you for Services and for reimbursable expenses incurred. Invoices are payable within 30 days of the invoice date, and you agree to pay a finance charge of 1½% per month on any unpaid balance not received by us within 30 days of the invoice date. If you require payment via credit card, Dewberry will assess a 3% processing fee on the total amount invoiced. Invoices may be based either upon our estimate of the proportion of the total Services actually completed at the time of billing for lump sum or fixed fee services, or in the case of hourly services, upon rendering of the Services. If any invoice is not paid within 30 days of the invoice date, we shall have the right either to suspend the performance of our Services until all invoices more than 30 days past due are fully paid or to terminate the agreement and to initiate proceedings to recover amounts owed by you. Additionally, we shall have the right to withhold from you the possession or use of any drawings or documents prepared by us for you under this or any other agreement with you until all delinquent invoices are paid in full. You shall not offset payments of our invoices by any amounts due, or claimed to be due for any reason. If you do not give us written notice disputing an invoice within 20 days of the invoice date, the invoice shall conclusively be deemed correct. All payments made by you should specify the invoice numbers being paid. If we receive payments that do not specify the invoices being paid, you agree that we may apply payments in our sole discretion. Time is of the essence of your payment obligations; and your failure to make full and timely payment shall be deemed a material breach.
9. **Information from You and Public Sources.** You shall furnish us all plans, drawings, surveys, deeds and other documents in your possession, or that come into your possession, which may be related to the Services, and shall inform us in writing about all special criteria or requirements related to the Services (together, "Information"). We may obtain deeds, plats, maps and any other information filed with or published by any governmental or quasi-governmental entity (together, "Public Information"). Unless we are engaged in writing as an additional service to independently verify such, we may rely upon Information and Public Information in rendering Services. We shall not be responsible for errors or omissions or additional costs arising out of our reliance on Information or Public Information. You agree to give prompt notice to us of any development or occurrence that affects the scope or timing of Services, or any defect in the final work submitted by us, or errors or omissions of others as they are discovered. We shall not be responsible for any adverse consequence arising in whole or in part from your failure to provide accurate or timely information, approvals and decisions, as required for the orderly progress of the Services.
10. **Plan Processing.** We may submit plans and related, or other, documents to public agencies for approval. However, it may be necessary, in order to serve your interests and needs, for us to perform special processing, such as attending meetings and conferences with different agencies, hand carrying plans or other documents from agency to agency, and other special services. These special services are not included in the basic fee and shall be performed as additional services on an hourly fee basis in accordance Paragraph 5 above.

11. **Meetings and Conferences.** To the extent the Agreement provides, we will attend meetings and conferences that you, or your representatives, reasonably require. Furthermore, we will meet on an as-needed basis with public agencies that might be involved in the Project. Because we cannot forecast the scope and nature of these meetings and conferences, we will perform meeting and conference services on an hourly fee basis in accordance with our applicable hourly rate schedule.
12. **Your Claims.** You release us from, and waive, all claims of any nature for any and all errors or omissions by us related to our performance under this Agreement, or in the performance of any supplementary services related to this Agreement, unless you have strictly complied with all of the following procedures for asserting a claim, as to which procedures time is of the essence:
 - a. You shall give us written notice within 10 days of the date that you discover, or should, in the exercise of ordinary care, have discovered that you have, or may have, a claim against us. If you fail to give us written notice within such 10 days, then such claim shall forever be barred and extinguished.
 - b. If we accept the claim, we shall have a reasonable time to cure any error or omission and any damage. This shall be your sole remedy, and you must not have caused the error or omission, or any damage resulting from the error or omission, to be cured, if we are ready, willing and able to do so.
 - c. If we reject the claim, we shall give you written notice of our rejection within 30 days of our receipt of your notice of claim. You shall then have 60 days to give us an opinion from a recognized expert in the appropriate discipline, corroborating your claim that we committed an error or omission, and establishing that the error or omission arose from our failure to use the degree of care ordinarily used by professionals in that discipline in the jurisdiction local to the Project. If you fail to give us such an opinion from a recognized expert within 60 days from the date we send you notice of our rejection of the claim, then such claim shall forever be barred and extinguished.
 - d. We shall have 60 days from receipt of your expert's written opinion to reevaluate any claim asserted by you. If we again reject such claim, or if the 60 day period from receipt of the written opinion of your expert elapses without action by us, then you may have recourse to such other remedies as may be provided under this Agreement.
13. **Hazardous or Toxic Wastes or Substances, Pollution or Contamination.** You acknowledge that Services rendered under this Agreement may be affected by hazardous or toxic wastes or substances, or pollution or contamination due to the presence of hazardous or toxic wastes or substances. To induce us to enter into this Agreement, you agree to indemnify, defend and hold us harmless from and against any and all liability, loss, damages, claims and demands for loss, damages, property damages or bodily injury, that relate, in any way, to both (a) hazardous or toxic wastes or substances, or pollution or contamination due to the presence of hazardous or toxic wastes or substances, and (b) the performance by us of our obligations under the Agreement, whether or not such performance by us is claimed to have been, or was, or may have been, negligent. Unless otherwise expressly set forth in this Agreement, we shall have no responsibility for searching for, or identifying, any hazardous or toxic wastes or substances, or pollution or contamination due to the presence of hazardous or toxic wastes or substances; but if we discover or suspect the presence of any such wastes, substances, pollution or contamination due to the presence of hazardous or toxic wastes or substances, then we, in our sole discretion, and at any time, may stop work under, or terminate, this Agreement, in which event we will have no further liability to you for performance under this Agreement, and you shall make the payments to us required by Paragraph 14 of the STCs.
14. **Termination.** Either party may terminate the Agreement if the other party materially breaches the Agreement and does not cure the breach within 7 days after receiving notice of the breach from the non-breaching party. You shall immediately pay us for our Services rendered and expenses incurred through the termination date, including fees and expenses that we incur as a result of the termination.
15. **Payment of Other Professionals.** If this Agreement includes continuation of services begun by other architects, engineers, planners, surveyors, or other professionals, we may suspend our Services until you make arrangements satisfactory to such other professionals for payment. If satisfactory arrangements have not been made within a time determined by us to be reasonable, then we may in our sole discretion terminate this Agreement.
16. **Assignment and Third-Party Beneficiaries.** Neither party shall assign or transfer any rights, interests or claims arising under this Agreement without the written consent of the other, provided, however, that we are permitted to (i) employ independent consultants, associates, and subcontractors as we may deem necessary to render the Services, (ii) assign our right to receive compensation under this Agreement, and (iii) transfer the Agreement to an affiliate of ours, in our sole discretion, with written notice to you (an affiliate for purposes of this Paragraph 16 is defined as any other business entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, us). This Agreement does not confer any benefit or right upon any person or entity other than the parties, except that our partners, members, managers, directors, officers, employees, agents and subcontractors shall have and be entitled to the protection afforded us under Paragraphs 9, 12, 13, 16, 20 and 22 of this Agreement.
17. **Applicable Law and Forum Selection.** The Commonwealth of Virginia's laws shall govern this Agreement in all respects, including matters of construction, validity, and performance. Except as provided in Paragraph 18, the parties agree that the courts of Fairfax County, Virginia, and the Federal District Court, Eastern District of Virginia, Alexandria Division, (together, "Courts") shall have exclusive jurisdiction over any controversy, including matters of construction, validity, and performance, arising out of this Agreement. The parties consent to the jurisdiction of the Courts and waive any objection either party might otherwise be entitled to assert regarding jurisdiction. The parties irrevocably waive all right to trial by jury in any action, proceeding, or counterclaim arising out of or related to this Agreement.
18. **Arbitration of Our Claims for Compensation.** Instead of proceeding in court, we, in our sole and absolute discretion, may submit any claim for compensation due us under this Agreement to arbitration in Fairfax County, Virginia in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the arbitration award may be entered in any court having jurisdiction. You agree not to assert any counterclaim or any defense by way of set-off in such arbitration, and that the arbitrator or panel shall have no authority to consider, or to render, an award based upon any such counterclaim or defense by way of set-off. We shall have the right to withdraw our demand for arbitration at any time before the arbitration hearing starts by giving written notice to the arbitrator or panel and you; and upon the giving of such notice by us, the arbitration shall terminate, no award shall be rendered, and we may then pursue our remedies in accordance with Paragraph 17 above.
19. **Severability.** If any part, term, or provision of this Agreement is held to be illegal or unenforceable, the validity and enforceability of the remaining parts, terms, and provisions of this Agreement shall not be affected, and each party's rights shall be construed and enforced as if the Agreement did not contain the illegal or unenforceable part, term, or provision.
20. **Limitations on Liability.** In recognition of the relative risks and benefits of the Project to you and us, you agree, that our liability for any loss, damages, property damages or bodily injury of or to you caused in whole or in part by us in the performance of this Agreement or any supplementary services in any way related to this Agreement, shall be limited in the aggregate to the amount of fees that you have paid to us for the Services. The parties intend that the foregoing limitation on liability shall apply to all claims, whether sounding in tort, contract, warranty, or otherwise. You release, waive, and shall not seek contribution from, or indemnification by, us for any claims of any nature made against you by any other person who may suffer any loss, damages, property damages or bodily injury in any manner associated with our services, or any supplementary services in any way related to this Agreement. Notwithstanding anything to the contrary elsewhere in the Agreement, we shall not be liable to you, in any event or for any amount, for delays; or for consequential, special or incidental damages; or for punitive or exemplary damages; or for the cost to add an item or component that we omitted from the instruments of service due to our negligence, to the extent that item or component would have otherwise been necessary, or adds value or betterment, to the Project. Should you find the terms of this Paragraph 20 unacceptable, we are prepared to negotiate a modification in consideration of an equitable surcharge to pay our additional insurance premiums and risk.
21. **Payment of Attorney's Fees.** The losing party shall pay the winning party's reasonable attorney's fees and expenses for the prosecution or defense of any cause of action, claim or demand arising under this Agreement in any court or in arbitration.
22. **Indemnification.** You agree to indemnify, defend and hold us harmless from and against any and all liability, loss, damages, claims and demands for loss, damages, property damages or bodily injury, arising out of acts or omissions by you, or your contractor, subcontractor or other independent company or consultant employed by you to work on the Project, or their respective partners, members, managers, directors, officers, employees, agents or assigns; or arising out of any other operation, no matter by whom committed or omitted, for and on behalf of you, or such contractor, subcontractor or other independent company or consultant, whether or not due in part to errors or omissions by us in the performance of this Agreement, or in the performance of any supplementary service in any way related to this Agreement, provided that you are not required to indemnify and hold us harmless under this Paragraph 22 in the event of our sole negligence.
23. **Integration Clause.** The Agreement represents the entire agreement of the parties. No prior representations, statements, or inducements made by either us, you, or the respective agents of either, that is not contained in the Agreement shall enlarge, modify, alter, or otherwise vary the written terms of the Agreement unless they are made in writing and made a part of the Agreement by attachment, incorporated by reference in the Agreement or signed or initialed on behalf of both parties.
24. **Notice.** Any notices issued to us shall be sent to our project manager with a copy sent via email to Notices@dewberry.com or mailed to 8401 Arlington Blvd, Fairfax VA 220131, Attn: Director of Contracts.