
MINUTES OF MEETING

Each person who decides to appeal any decision made by the Board with respect to any matter considered at the meeting is advised that the person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which such appeal is to be based.

**HERITAGE ISLE AT VIERA
COMMUNITY DEVELOPMENT DISTRICT**

The **Regular** meeting of the Board of Supervisors of Heritage Isle at Viera Community Development District was held on **Tuesday, August 26, 2014 at 10:30 a.m.** at the Brevard County Government Center, located at 2725 Judge Fran Jamieson Way, Building C, Viera, FL 32940.

Present and constituting a quorum:

Bernie Reed	Board Supervisor, Chairman
Jay Williams	Board Supervisor, Vice Chairman
Kenneth Bonin	Board Supervisor, Assistant Secretary
Joe Fulghum	Board Supervisor, Assistant Secretary
Roger Teurfs	Board Supervisor, Assistant Secretary

Also present were:

Melissa Dobbins	District Manager, Rizzetta & Company, Inc.
Jere Earlywine	District Counsel, Hopping Green & Sams, P.A.
Ana Saunders	District Engineer, BSE Consultants
Tony Romano	Tropic Care
Darcie Madison	Leland Management

Audience Members

FIRST ORDER OF BUSINESS

Call to Order

Mr. Reed called the meeting to order at 10:35 a.m. and read the roll call.

SECOND ORDER OF BUSINESS

Audience Comments on Agenda Items

There was a question regarding the number of lots reduced and its impact on the budget.

THIRD ORDER OF BUSINESS

**Consideration of the Minutes of the Board
of Supervisors' Special Meeting held May
12, 2014**

On Motion by Mr. Williams, seconded by Mr. Fulghum, with all in favor, the Board approved the minutes of the Board of Supervisors' special meeting held May 12, 2014 for Heritage Isle at Viera Community Development District.

FOURTH ORDER OF BUSINESS

Consideration of the Minutes of the Board of Supervisors' Regular Meeting held May 20, 2014

Mr. Bonin requested adding the language "at exit and entrances" to the sixth order of business on page two, under the District Engineer Report.

On Motion by Mr. Teurfs, seconded by Mr. Fulghum, with all in favor, the Board approved the minutes of the Board of Supervisors' regular meeting held May 20, 2014, as amended, for Heritage Isle at Viera Community Development District.

FIFTH ORDER OF BUSINESS

Ratification of the Operation and Maintenance Expenditures for April 2014, May 2014, June 2014 and July 2014

On Motion by Mr. Williams, seconded by Mr. Teurfs, with all in favor, the Board ratified the operations and maintenance expenditures for April 2014 in the amount of \$50,155.47, May 2014 in the amount of \$44,208.01, June 2014 in the amount of \$42,769.33 and July 2014 in the amount of \$35,072.02 for Heritage Isle at Viera Community Development District.

SIXTH ORDER OF BUSINESS

Staff Reports

A. District Counsel

Mr. Earlywine updated the Board of Supervisors that Tropic-Care's contract expires at the end of the fiscal year. The contract is under the bid threshold. After discussion, the Board of Supervisors approved a one-year contract with Tropic-Care for landscape maintenance in the amount of \$191,248.

On Motion by Mr. Reed, seconded by Mr. Bonin, with all in favor, the Board approved a one-year contract with Tropic-Care for landscape maintenance in the amount of \$191,248 for Heritage Isle at Viera Community Development District.

Mr. Earlywine advised the Board of Supervisors regarding Sunshine Laws and Public Records Laws as they relate to social media and communications with constituents outside of Board meetings. The Board of Supervisors discussed the issue.

B. District Engineer

Ms. Saunders updated the Board of Supervisors regarding the construction of Phase 8; which 90% of the mass grading is completed. Tract F has some low spots, but the contractor is going to adjust the grading and cut in a few swales. The utilities are 70% installed. The roadway paving will occur in 2-3 weeks. The homebuilding has also started.

Regarding the Vallejo Way drainage issue, they found a yard drain was covered.

Regarding the Newhall Lane drainage, concerns will be reviewed further with Mr. Romano.

Also, they will contact Lennar about the yard drains off of Broderick Drive.

C. Tropic Care

Mr. Romano updated the Board of Supervisors that the no fishing signs have been installed.

D. District Manager

Ms. Dobbins noted that the next regularly scheduled Board of Supervisors' meeting will be held October 28, 2014 at 10:30 a.m.

Ms. Dobbins updated the Board of Supervisors that Tropic Care is now inspecting Legacy Boulevard streetlights for the CDD. The management office receives reports of outages and reports them directly to FPL.

SEVENTH ORDER OF BUSINESS

**Discussion regarding Board Seat #3
Nomination Process**

After discussion, the Board of Supervisors directed staff to e-blast an announcement out to the community to announce the open seat and that any candidate that lives in the community will need to send a resume to the District Manager's office and come to the January 27, 2015 meeting.

<p>On Motion by Mr. Reed, seconded by Mr. Williams, with all in favor, the Board directed staff to e-blast an announcement out to the community to announce the open seat and that any candidate that lives in the community will need to send a resume to the District Manager's office and come to the January 27, 2015 meeting for Heritage Isle at Viera Community Development District.</p>
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EIGHTH ORDER OF BUSINESS

**Consideration of Petition Regarding
Alligators**

Mr. Reed and Mr. Earlywine reviewed the petition and noted that the standards for alligator trapping are set by the State of Florida and Florida Fish and Wildlife Conservation Commission. Mr. Earlywine also reviewed for the Board certain mis-statements made by the Viera Voice newspaper

regarding the treatment of alligators in Heritage Isle.

For the record, the steps the CDD does take are the following: if an alligator is a threat to a person, property or pet, residents should contact the District Manager's office, the District Manager will contact a licensed trapper through the Florida FWC hotline and the trapper will review if the alligator meets specific requirements to be removed.

NINTH ORDER OF BUSINESS

**Consideration of Pond Maintenance
Contract Renewal**

The Board of Supervisors approved a one-year renewal with Aquatic Systems Inc. for pond maintenance at the current rate of \$2,686 per month.

On Motion by Mr. Teurfs, seconded by Mr. Williams, with all in favor, the Board approved a one-year renewal with Aquatic Systems Inc. for pond maintenance at the current rate of \$2,686 per month for Heritage Isle at Viera Community Development District.

TENTH ORDER OF BUSINESS

**Consideration of Pond Fountain
Maintenance Contract Renewal**

The Board of Supervisors approved a one-year renewal with Aquatic Systems Inc. for fountain maintenance at the current rate of \$322.16 per quarter.

On Motion by Mr. Teurfs, seconded by Mr. Williams, with all in favor, the Board approved a one-year renewal with Aquatic Systems Inc. for fountain maintenance at the current rate of \$322.16 per quarter for Heritage Isle at Viera Community Development District.

ELEVENTH ORDER OF BUSINESS

Consideration of Tree Trimming Policy

On Motion by Mr. Williams, seconded by Mr. Teurfs, with all in favor, the Board accepted the tree trimming policy for Heritage Isle at Viera Community Development District.

TWELFTH ORDER OF BUSINESS

**Acceptance of Financial Report for Fiscal
Year ending September 30, 2013**

On Motion by Mr. Williams, seconded by Mr. Teurfs, with all in favor, the Board accepted the Financial Report for Fiscal Year ending September 30, 2013 for Heritage Isle at Viera Community Development District.

THIRTEENTH ORDER OF BUSINESS

**Consideration of McDirmit Davis
Engagement Letter for Auditing Services**

Mr. Earlywine noted that he would like to request McDirmit Davis review the agreement and,

among other things, require an earlier deadline of April so the Board has time to review the report prior to the state deadline to submit of June 30th.

The Board of Supervisors approved the engagement letter in substantial form.

On Motion by Mr. Teurfs, seconded by Mr. Williams, with all in favor, the Board approved the engagement letter for audit services from McDirmit Davis, in substantial form, for Heritage Isle at Viera Community Development District.

FOURTEENTH ORDER OF BUSINESS

Consideration of Improvement Inspection Report

Ms. Saunders presented the improvement inspection report.

After discussion, the Board of Supervisors directed the District Engineer to obtain proposals on all 4 & 5 classifications within the report, a separate cost on all 3 classifications and retrieve a proposal from East Coast Docks on all bridge repairs. In addition, they requested a separate cost of sediment removal in Phase 7.

On Motion by Mr. Reed, seconded by Mr. Teurfs, with all in favor, the Board directed the District Engineer to obtain proposals on all 4 & 5 classifications within the report, a separate cost on all 3 classifications and retrieve a proposal from East Coast Docks on all bridge repairs for Heritage Isle at Viera Community Development District.

FIFTEENTH ORDER OF BUSINESS

Discussion Regarding Stormwater Utility Inspection

After discussion, the Board of Supervisors approved a proposal from Dewberry (Exhibit "A") to inspect the stormwater system.

On Motion by Mr. Williams, seconded by Mr. Bonin, with all in favor, the Board approved a proposal from Dewberry (Exhibit "A") to inspect the stormwater system, subject to confirmation of the scope of the proposal by Dewberry, the Chair and District Staff, for Heritage Isle at Viera Community Development District.

SIXTEENTH ORDER OF BUSINESS

Public Hearing on Fiscal Year 2014/2015 Final Budget

On Motion by Mr. Reed, seconded by Mr. Fulghum, with all in favor, the Board opened the Public Hearing for Fiscal Year 2014/2015 Final Budget for Heritage Isle at Viera Community Development District.

There was a question regarding the future decrease in the number of lots.

There was a comment regarding not needing an increase as the District has a surplus.

On Motion by Mr. Reed, seconded by Mr. Fulghum, with all in favor, the Board closed the Public Hearing for Fiscal Year 2014/2015 Final Budget for Heritage Isle at Viera Community Development District.

SEVENTEENTH ORDER OF BUSINESS

**Consideration of Resolution 2014-08,
Approving the Fiscal Year 2014/2015 Final
Budget**

The Board of Supervisors approved Resolution 2014-08, Adopting the Final Budget for Fiscal Year 2014/2015, setting the total General Fund Budget at \$694,205 and the Debt Service Fund Budget at \$774,102.99 for a total budget of \$1,468,307.90 excluding collection costs.

On Motion by Mr. Teurfs, seconded by Mr. Williams, with all in favor, the Board approved Resolution 2014-08, Adopting the Final Budget for Fiscal Year 2014/2015, setting the total General Fund Budget at \$694,205 and the Debt Service Fund Budget at \$774,102.99 for a total budget of \$1,468,307.90 excluding collection costs for Heritage Isle at Viera Community Development District.

EIGHTEENTH ORDER OF BUSINESS

**Public Hearing to Consider the Imposition
of Special Assessments**

On Motion by Mr. Fulghum, seconded by Mr. Williams, with all in favor, the Board opened the Public Hearing to consider the Imposition of Special Assessments for Heritage Isle at Viera Community Development District.

There were no comments from the audience.

On Motion by Mr. Reed, seconded by Mr. Teurfs, with all in favor, the Board closed the Public Hearing to Consider the Imposition of Special Assessments for Heritage Isle at Viera Community Development District.

NINETEENTH ORDER OF BUSINESS

**Consideration of Resolution 2014-09,
Imposing Special Assessments and
Certifying the Assessment Roll**

On Motion by Mr. Reed, seconded by Mr. Teurfs, with all in favor, the Board approved Resolution 2014-09, Imposing Special Assessments and Certifying the Assessment Roll for Heritage Isle at Viera Community Development District.

TWENTITH ORDER OF BUSINESS

**Consideration of Resolution 2014-10,
Setting the Date, Time and Location of the
Regular Meetings**

The May meeting date was moved to May 19, 2015.

On Motion by Mr. Williams, seconded by Mr. Teurfs, with all in favor, the Board approved Resolution 2014-10, Setting the Date, Time and Location of the Regular Meetings, as amended, for Heritage Isle at Viera Community Development District.

TWENTY-FIRST ORDER OF BUSINESS

**Audience Comments and Supervisor
Requests**

There was a comment that the fountains in the ponds are a benefit and they help reduce the mosquitoes.

There was a request for the CDD to allow fishing.

There was a question regarding the duplex's going in at Phase 4.

There was a question regarding the covers to yard drains.

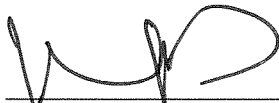
Mr. Fulghum noted that he appreciated the Chair's request for an independent engineer to inspect the stormwater system.

Mr. Bonin requested that the future assessment notice include charts and total amounts of debt service and operation and maintenance assessments amount.

TWENTY-SECOND ORDER OF BUSINESS

Adjournment

On Motion by Mr. Teurfs, seconded by Mr. Fulghum, with all in favor, the Board adjourned the meeting at 1:20 p.m. for Heritage Isle at Viera Community Development District.



Secretary/Assistant Secretary

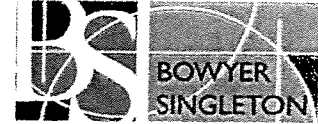


Chairman/Vice Chairman

Exhibit “A”

Sent Via Email: mdobbins@rizzetta.com

August 14, 2014



Dewberry | Bowyer-Singleton
520 South Magnolia Avenue
Orlando, Florida 32801
407.843.5120
407.649.8664 fax
www.dewberry.com

Ms. Melissa Dobbins
Associate Director of District Services
Rizzetta & Company, Inc.
2806 N. 5th St., Unit 403
St. Augustine, FL 32084

Subject: **Proposed Work Order Authorization - Continuing Engineering Services
Heritage Isle at Viera Community Development District (CDD)**

Dear Mr. Dobbins:

Dewberry Engineers Inc. d/b/a Dewberry | Bowyer-Singleton is pleased to submit this Work Order Authorization to Provide Continuing Engineering services to the Heritage Isle at Viera Community Development District (CDD).

With this information in mind, we propose the following tasks and corresponding fees:

I. General Engineering Services – Stormwater Management System Review and Inspection

We will provide general engineering consulting services to the Heritage Isle at Viera Community Development District for the review and inspection of the existing stormwater management system within the CDD. We will inspect control structures, major connections as well as outfalls, to evaluate the functioning of the system and determine any concerns in the operation of the system. These services will include, but not be limited to, attending meetings, preparation of reports to the Board, providing consulting services and input as well as coordination with the District Manager and District Attorney as may be needed.

Our fee for this task will be based on time and materials, in accordance with the enclosed Schedule of Charges, and as attached to this sheet. We estimate a budget of \$6,800, plus other direct costs.

II. Other Direct Costs

Other direct costs include items such as printing, drawings, travel, deliveries, et cetera. This does not include any of the application fees for the various agencies, which are the owner's responsibility and have not been accounted for in this proposal. We recommend that a budget for these costs be established in an amount estimated to \$870.

III. Additional Services

Any Additional Services requested that are not a part of this proposal will be invoiced either on a time and materials basis, in accordance with the enclosed Schedule of Charges, or on a mutually agreed upon fee. Authorization under this task must be in writing.

This Proposed Work Order Authorization is based on the Engineering Agreement, both of which have been reviewed and are fully understood, and represents the entire understanding between Heritage Isle at

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 24 below (the "Agreement") between Dewberry ("we" or "us" or "our") and its client ("you" or "your") for the performance of architectural, engineering, surveying, planning, or other services ("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. Unless the Agreement expressly requires, in no event do we have any obligation or responsibility for:

- a. The correctness and completeness of any document which was prepared by another entity.
- b. The correctness and 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.

Should shop drawing review be incorporated into the Services, we shall pass on the shop drawings with reasonable promptness. Checking and approval 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. Approval shall not be construed as permitting any departure from contract requirements nor as relieving the Contractor of the sole and final responsibility for any error in details, dimensions or otherwise that may exist.

We do not provide legal, accounting, or insurance services.

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. You shall be permitted to retain copies, including reproducible copies of our instruments of service for information and reference for the Project. Our drawings, specifications, or other documents shall not be used by you or others on other projects for any reason or for completion 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.

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 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. **Construction Costs.** Construction costs are defined as the total actual cost or estimated cost to you of all elements of the project designed or specified by us excluding our fees. We assume no responsibility for any Project or construction cost estimates or opinions given to you as we have no control over the cost of labor, materials, equipment, or services furnished by others, or over competitive bidding or market conditions.

8. **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.

9. **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 one and one half percent per month on any unpaid balance not received by us within 30 days of the invoice date. 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 make full and timely payment shall be deemed a material breach.

10. **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.

11. **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 with our applicable hourly rate schedule.

12. 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.

13. 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 such rejection within 30 days of our receipt of the notice of claim from you. You shall then have 60 days within which to furnish us with 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 furnish 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 the written opinion of your expert within which 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.

14. Hazardous or Toxic Wastes or Substances, Pollution or Contamination. You acknowledge that Services rendered under this Agreement may, or will, involve or 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 and hold us harmless from liability, loss and damages of any nature, including actual attorney's fees and related costs and expenses, arising out of claims made against us 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 15 of the STCS.

15. Termination. Either party may terminate the Agreement if the other party materially breaches the Agreement. 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.

16. 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.

17. 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. This Agreement shall not confer any benefit or right upon any person or entity other than you, us and our partners, members, managers, directors, officers, employees, agents and subcontractors. Our partners, members, managers, directors, officers, employees, agents and subcontractors shall have and shall be entitled to the protection afforded us under Paragraphs 10, 13, 14, 17, 21 and 23 of this Agreement. Despite anything in this Paragraph 17 to the contrary, we may employ independent consultants, associates, and subcontractors as we may deem necessary to render the Services and we may assign our right to receive compensation under this Agreement.

18. 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 19, 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.

19. 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 18 above.

20. 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.

21. Limitations on Liability. Our liability for any loss, property damage or bodily injury of or to you caused in whole or in part by us in the performance of this Agreement, or in the performance of 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, in contract, in 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, property damage or bodily injury in any manner associated with our services, or our partners, members, managers, directors, officers, employees, agents and subcontractors under this Agreement, or any supplementary services in any way related to this 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. Should you find the terms of this Paragraph 21 unacceptable, we are prepared to negotiate a modification in consideration of an equitable surcharge to pay our additional insurance premiums and risk.

22. 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.

23. Indemnification. You agree to indemnify 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 work undertaken on the Project 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 performed, 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 23 in the event of our sole negligence.

24. 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.