



ESI Consultants, Ltd.  
*Excellence, Service, Integrity*

June 11<sup>th</sup>, 2018

Mr. Noriel Noriega, P.E.  
Village of Westmont  
31 West Quincy Street  
Westmont, IL 60559

Westmont Corridor Plan – 2018 Gateway Beautification Project

Dear Mr. Noriega:

ESI Consultants, Ltd is pleased to provide this proposal for the 2018 Gateway Beautification Project (Project) to assist the Village of Westmont with engineering services pertaining to the design and permitting for median and parkway restoration and beautification along Ogden Avenue and Cass Avenue within the Village of Westmont. If you find this agreement to be acceptable, the executed copies of this letter, together with Attachment A - General Terms and Conditions previously submitted to and accepted by the Village, will constitute an agreement between the Village of Westmont (CLIENT) (Village) and ESI Consultants, Ltd. (ENGINEER) (ESI) for services on this project.

**Understanding of the Project**

In conjunction with the Westmont Corridor Plan, the Village desires to restore, reconstruct and beautify the gateways into the Village of Westmont along Cass Avenue and Ogden Avenue. As part of this project concrete medians will be reconstructed with pervious interior and landscape beautification. Sprinkler systems and enhancement lighting will also be included as part of the Project. Project limits will be defined as:

1. Along Ogden Avenue from Stonegate Road east to the Route 83 overpass
2. Along Cass Avenue from Indian Trail Drive north to Oakley Drive N
3. Within the north depressional area between St. James Crossing and Route 83 – Monarch Waystation
4. Cass Avenue from Oakley Drive N to 35<sup>th</sup> Street

Project will include concrete and asphalt removal and repair, curb and gutter removal and replacement, median plantings, nectar plantings, host plantings, sprinkler system, electrical enhancement lighting, and associated restoration.

**BASIC SCOPE OF SERVICES**

This proposal includes the following scope of services:

## Task 1 – Phase I Preliminary Design Phase

This task will include the following:

- **Project Kick Off Meeting:** The ESI Team will meet with Village staff for a project kick off meeting to review the scope of services, project plan and project schedules.
- **IDOT, DuDOT & Village Coordination:** Ogden Avenue is a state route, Cass Avenue is a County route. The Village Community Development Department has negotiated an inter-governmental agreement with the County for the improvements along Cass Avenue and the state has been informed of the proposed improvement. As part of this task the ESI team will coordinate the project with the County, State, and Village.
- **Existing Data Collection:** The ESI Team will coordinate with known private utilities (ComEd, NICOR, AT&T, etc.) for existing plans. ESI will submit utility requests to verify the location, size and depth of facilities within the project limits.
  - **Survey:** Topographic survey will be completed in AutoCAD format. General scope of the survey is:
    - ROW to ROW within the above-referenced project limits.
    - Location of all utilities at surface level
    - Location and size of all trees within the project limits
    - Location of wetland stakes/flags placed as part of the wetland delineation services
    - All elevations are to be DuPage County Datum (NAVD 88) with site benchmarks set at reasonable intervals throughout the length of the job and noted on the final drawings
    - The coordinate system would be Illinois State Plane East Zone
  - **Wetland Determination/Delineation/Report/DuPage Permitting:** Wetland delineation of the proposed Monarch Waystation area will be performed by Gary R. Weber Associates, Inc. as part of the ESI Team. Scope of these services include:
    - **Field Work:** Review publicly available water resource maps, soil survey and topographic maps; stake wetland boundaries and take sample points; prepare field sketch of staked wetland boundaries for survey coordination; initiate threatened and endangered species consultation
    - **Report Preparation:** Prepare executive summary of wetland delineation findings; exhibits, photos and USACE data forms, including any pertinent correspondence from regulating agencies.
    - **DuPage County Verification:** Attend meeting with DuPage County/Municipal personnel to verify the staked wetland boundaries.
    - **Tab 4 Submittal:** Prepare wetland portion (TAB 4) of a DuPage County Stormwater permit application, including submittal of pre-construction notification to Army Corps of Engineers, IL EPA and IDNR, if necessary. The client will provide the necessary plans, legal descriptions and other construction details.
- **Preliminary Plans (60%):** This task includes preparation of preliminary design plans and cost estimates based on the sketches provided by the Village. These plans will be reviewed with the Village for comment and approval to continue to the pre-final review phase. Changes requested by the Village at this stage will be incorporated into the Pre-final design plans in Task 2.

- Landscape Design: As part of the plan submittal, landscaping design and construction plans will be included. Landscaping Design will be performed by Gary R. Weber Associates, Inc. as part of the ESI Team. Scope of these services include:
  - Preliminary Landscape Plan – preparation of preliminary plan for review and discussion with the Village
  - Final Landscape Plan – Based on review comments by the local agency, DuPage County, and IDOT prepare final landscape plan, plant list, specifications and landscape details, and dimensioning plans. These plans will be incorporated by ESI into the construction plans, specifications, and estimates.
  - Meetings – Scope includes attendance at one (1) project meeting
  - Revisions – Prepare up to two (2) sets of revisions, if necessary

### **Task 2 – Phase II Final Design**

ESI Consultants, Ltd. will prepare design plans and specifications in compliance with Village standards.

This task shall include the following:

- Preparation of Pre-Final (95%) Design Plans, Specifications, and Cost Estimates: This task includes preparation of pre-final design plans, specifications, and cost estimates for submittal and review by the Village of Westmont, IDOT and DuPage County DOT.
- Preparation of Final (100%) Design Plans, Specifications, and Cost Estimates: This task includes preparation of final design plans, specifications, and cost estimates for submittal and approval by the Village of Westmont, IDOT and DuPage County. As part of this task revision comments will be incorporated into the plan set.
- Meetings: The ESI team will coordinate and attend up to two (2) review meetings with the Village of Westmont and two (2) open house style public meetings within the Village of Westmont Village limits.
- Project Management, QA/QC, and DuPage/IDOT Permitting: Coordination and permitting with IDOT for the Ogden Avenue portion of the project, coordination with DuPage County DOT for the Cass Avenue portion (permitting is not included for the Cass Avenue portion and not required due to the intergovernmental agreement), and coordination and permitting with DuPage County DEC for the Monarch Waystation portion of the project will be provided as part of this task. This includes permit submittals and responses to one (1) round of comments. In addition, a coordination meeting with the County is included in this task.

QA/QC review – ESI will perform internal review of the plans and specifications to ensure that the documents meet ESI and Village of Westmont design standards.
- Bid Support Services: ESI Consultants, Inc. will assist the Village of Westmont in preparation of the bid package and solicitation of bids for this project. This task shall include the following:
  - Pre-Bid Meeting: The ESI Project Manager will coordinate and attend a pre-bid meeting for prospective bidders of the project. Meeting minutes will be taken and distributed to project plan-holders.
  - Addendums: ESI will review questions from contractors and issue clarifications and/or addendums as appropriate during the bidding process.
  - Bid Opening and Recommendations: ESI will attend the bid opening and record the bids as read. ESI will prepare a bid tabulation and recommendation letter for the Village's consideration when awarding a contract.

## **Clarifications**

The scope of services, proposed schedule and associated fee includes the following assumptions:

- No Right of Way or construction easements are required
- No hazardous waste remediation is required. Testing of soils is not included in this proposal.
- The project is not in an historic district
- No threatened and endangered species or other unique natural resources are impacted
- No construction phase services are included

## **Schedule**

The 2018 Gateway Beautification Project schedule will begin one week after notice to proceed, anticipated to be July 5<sup>th</sup>, 2018. Design completion will be October 1<sup>st</sup>, 2018 with a target letting date of April 1<sup>st</sup>, 2019.

## **Additional Services**

For clarification, the following items are not included in the scope of this agreement. Any work associated with these items, if requested, will be considered as Additional Services:

1. Construction Phase review or observation services
2. ROW Acquisition or easement platting
3. Geo-technical engineering and testing
4. Environmental testing

## **Client Responsibilities**

CLIENT is to provide the following in a timely manner:

1. Guarantee and make all provisions for ENGINEER to enter upon public and private lands as required to perform the services under this agreement.
2. Designate in writing a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define CLIENT's policies and decisions with respect to ENGINEER's services for the Project.
3. Provide all criteria and full information as to CLIENT's requirements for the PROJECT, including objectives and constraints and performance requirements.
4. Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including geotechnical reports, utility atlases and any other data relative to design or construction of the Project.
5. Furnish to ENGINEER, as required for performance of ENGINEER's Services, other special data or consultations not covered in Basic Services of the Engineer
6. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as CLIENT deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

7. Furnish approvals and permits from all governmental authorities having jurisdiction over the PROJECT and such approvals and consents from others as may be necessary for completion of the PROJECT.
8. Give prompt written notice to ENGINEER whenever CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or non-conformance in the work of any Contractor.
9. Bear all costs incidental to compliance with the requirements of this Section.

## COMPENSATION

### 1. **Amount of Payment:**

For the work outlined in the Scope of Services described herein, the Village shall compensate ESI Consultants, Ltd in the lump-sum amount of **\$69,700.00**.

For additional, reduced or changed scope of services, the amount of payment shall be adjusted based on the ESI 2018 Naperville Standard Billing Rate Sheet hourly-labor-billing-rate-plus-reimbursable-expense basis. This rate sheet has been previously accepted by the Village.

Reimbursables are defined as travel and subsistence, printing, vehicles, testing apparatus, commercial services, courier expenses, telephone/fax and subconsultants.

### 2. **Statements:**

ESI will bill CLIENT monthly for the engineering services and reimbursable expenses covered under this base agreement. Payment is to be made within thirty (30) days of receipt of our invoice. If CLIENT objects to any invoice submitted by us, CLIENT shall so advise us in writing giving reasons therefore within fourteen (14) days of receipt of such invoice. If no such objection is made, the invoice will be considered acceptable to CLIENT. ESI reserves the right to stop work on the PROJECT if our invoices are overdue by more than thirty (30) days. ESI shall not be liable for damages arising out of any such stop of work, nor deemed to be in default of this Agreement as a result thereof. These financial arrangements are based on the orderly and continuous progress of the PROJECT.

It is necessary that CLIENT advise us in writing at an early date if CLIENT has budgetary limitations for the overall Project Cost or Construction Cost. ESI will endeavor to work within those limitations. If CLIENT requests, ESI will submit to CLIENT periodically during the report preparation phase of our services our opinions as to the probability of completing construction within CLIENT's budget and, where appropriate, request an adjustment in the budget or a revision in the extent, scope or quality of the PROJECT. ESI does not guarantee that our opinions will not differ from negotiated prices or bids. If CLIENT wishes greater assurance as to probable construction costs or if CLIENT wishes formal estimates, an independent cost estimator should be employed.

The proposal cost estimate for engineering services prepared by ENGINEER represents Engineer's best judgment as a design professional. It is recognized, however, that neither the Engineer nor the CLIENT has any control over the costs of changes required by the reviewing agencies or unforeseen conditions. Accordingly, ENGINEER cannot and does not warrant or represent that final costs will not vary from those stated above.

## GENERAL CONSIDERATIONS

This proposal and the previously accepted Attachment A - "General Terms and Conditions",




hereto and incorporated therein, represent the entire understanding between CLIENT and ENGINEER in respect of the Project and may only be modified in writing when signed by both parties. If this proposal satisfactorily sets forth CLIENT's understanding of the arrangement between CLIENT and ENGINEER, please sign the enclosed copy of this letter in the space provided below and return it to ESI Consultants, Ltd. This proposal will be open for acceptance for thirty (30) days from the date hereon unless changed by us in writing.

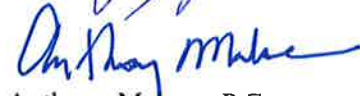
We appreciate the opportunity to serve the Village of Westmont. If you have any questions regarding this proposal, please contact Anthony Bryant at (630) 470-7987.

Sincerely,

ESI CONSULTANTS LTD



Anthony J. Bryant, P.E.  
Director of Municipal Services and Transportation



Anthony Malone, P.E.  
Vice President

Village of Westmont

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



## ATTACHMENT A

### GENERAL TERMS AND CONDITIONS

1. **Governing Law.** It is acknowledged that all Agreements are deemed to be entered into and executed at the ENGINEER's offices in Naperville and are governed by, and construed in accordance with, the laws of the State of Illinois.
2. **Rates.** All work performed by ENGINEER staff (inclusive of professional, support, and secretarial staff), unless specified elsewhere in the Agreement, shall be charged at ENGINEER's then applicable standard hourly rates for staff. A copy of current rates is attached to this Agreement.
3. **Terms of Payment.** ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred, based upon ENGINEER's estimate of the proportion of the total services actually completed at the time of billing or based upon actual hours expended during the billing period. CLIENT shall make prompt monthly payments in response to ENGINEER's monthly statements.

If CLIENT fails to make any payment due ENGINEER for services and expenses within thirty (30) days after receipt of ENGINEER's statement therefore, the past amounts due ENGINEER will be increased at the rate of 1% per month retroactively from the date of the invoice. ENGINEER may after giving seven days written notice to CLIENT, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. ENGINEER shall have no liability whatsoever to CLIENT for any costs or damages as a result of such suspension.

4. **Client's Responsibilities.** CLIENT shall do the following in a timely manner so as not to delay the services of ENGINEER.
  - a. Provide all criteria and full information as to CLIENT's requirements for the Project, including design objectives and constraints, borings, probings and subsurface explorations, hydrographic surveys, laboratory tests, environmental assessment and impact statements, property, boundary, easement, right-of-way, topographic and utility surveys, property descriptions, zoning, deed and other land use restrictions; all of which ENGINEER may use and rely upon in performing services under this Agreement.
  - b. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.
  - c. Give prompt written notice to ENGINEER whenever CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or non-conformance in the work of any Contractor.
5. **Engineer's Responsibilities.** ENGINEER will render engineering services in accordance with generally accepted and currently recognized engineering practices and principles. ENGINEER makes no warranty, either expressed or implied, with respect to its services.
  - a. Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the CLIENT and any other party concerning the Project, the ENGINEER shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the CLIENT, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the ENGINEER be responsible for the acts or omissions of the CLIENT, or for the failure of the CLIENT, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the ENGINEER.
  - b. CLIENT reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and ENGINEER and CLIENT shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes
6. **Right to Stop Services Due to Payment Delinquency.** ENGINEER reserves the right to stop work specified under the scope of services attached hereto if any progress invoice is more than 30 days outstanding. In such instance, the Client shall retain complete liability for payment of fees and expenses associated with work performed through the date work was stopped. Client holds Engineer harmless of any actions or conditions, or from any penalties or fees, which Client incurs from Engineer stopping work on a project for such non-payment.
7. **Expiration of Proposed Agreement.** Unless otherwise indicated in the Agreement, the proposed Agreement will become null and void at 5:00 p.m., Central Time, 30 calendar days following the date thereof, unless the executed Agreement is returned to ENGINEER prior to that time. However, ENGINEER retains the unilateral right to accept an executed Agreement subsequent to the scheduled expiration date. ENGINEER's acceptance of the Agreement after the expiration date will be signified by its commencement of work included in the scope of services. Should ENGINEER commence an engagement after its receipt of an executed Agreement, but subsequent to the expiration date of that Agreement, the Agreement shall be deemed a contract and shall be fully binding on the Client and on ENGINEER.
8. **Termination.** Subsequent to execution of the Agreement by the Client and its acceptance by ENGINEER, either party may terminate the Agreement without cause upon providing written notice to the other party. Should the Agreement be terminated, written notice must be conveyed via certified mail, and all costs associated with ENGINEER's work rendered to the date of receipt (or mailing, if initiated by

ENGINEER) of the termination notice must be paid in full by the Client, as well as any associated expenses and the expense processing fee plus costs of termination including salaries, overhead, expenses and fee incurred either before or after the date of termination.

9. **Confidentiality of Assignment.** ENGINEER will respect the confidential nature of the assignment and in so doing will use its discretion where specific identification of the project or the Client might be required in obtaining research data. In the course of performing services under this Agreement, Client may disclose to ENGINEER, or ENGINEER may otherwise acquire, confidential or proprietary business or technical information ("Information"). ENGINEER will receive and maintain in confidence all Information and will exercise all reasonable efforts to avoid the disclosure of Information to others. ENGINEER will not use Information for any purpose other than the performance of services for Client.
10. **Use of Reports by Clients/Copyright.** ENGINEER's interim drafts, memoranda, and final reports will not be presented to third parties by the Client except in the form delivered. In no event may any ENGINEER report be used in whole or in part in any public offering or security without the prior written consent of ENGINEER. No abridgment, abstracting, or excerpting of reports may be made for any purpose whatsoever without obtaining the permission of ENGINEER. ENGINEER does not authorize conveyance of, or reference to, all or any part of the contents of its reports to the public through advertising, public relations, news, sales, or other media without prior written consent. The copyright of all reports and documents are held by ENGINEER. CLIENT may make and retain copies for information and reference in connection with the use and occupancy of the Project by CLIENT and others; however, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's independent professional associates or consultants, and CLIENT shall indemnify and hold harmless ENGINEER and ENGINEER's independent professional associates and consultants from all claims, damages, losses and expenses including reasonable attorney's fees and costs of defense arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by CLIENT and ENGINEER.
11. **Objectivity.** To protect Client, and to assure that ENGINEER's research results, observations and recommendations will continue to be accepted as objective and impartial, it is expressly understood and agreed that ENGINEER's fee for the undertaking of this engagement is in no way dependent upon the specific conclusions reached or the nature of the advice given in the draft and/or final reports.

ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. CLIENT also agrees not to make resolution of any dispute with ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER signing any such certification.

12. **Excusable Delays.** ENGINEER shall not be in default of its obligations under the Agreement if such failure arises out of causes beyond its control and without the fault or negligence of ENGINEER. Such causes may include, but are not restricted or limited to, acts of God, acts of any government, fires, floods electrical brownouts, strikes, or unusually severe weather. Other circumstances creating excusable delays include, but are not limited to, delivery of a corresponding retainer fee, delivery of an executed Agreement without corresponding delivery of data required for ENGINEER to perform its services (as specified in the Agreement or in attachments thereto), changes in the scope of services requested by the Client before or after execution of the Agreement and/or the commencement of work, Client initiation of changes in a development plan or project after work has commenced by ENGINEER, or any other delay prompted by an action on the part of the Client.

Any delays associated with delivery of the specified product due to a Client's tardiness in providing ENGINEER with data it needs to complete the engagement shall not be deemed a breach of the Agreement by ENGINEER. Should a Client change the scope of services, any deadline date or cost maximum specified in the Agreement will be changed accordingly. This may be done by ENGINEER verbally or in writing. Any excusable delay caused by a change in the scope of services or a change in the development plan or program will cause an increase in ENGINEER's fee. Any increase will be billed on an hourly plus expenses basis in addition to the fee cited in the Agreement

13. **Limitation of Liability** CLIENT and ENGINEER have discussed the risks, rewards, and benefits of the project and the ENGINEER's total fee for services. Risks have been allocated such that the CLIENT agrees that, to the fullest extent permitted by law, the ENGINEER's total liability to the CLIENT for any and all injuries, claims, losses, expenses, damages, or claim expenses arising out of this agreement from any cause or causes shall not exceed the total fees associated with this agreement or \$100,000, whichever is less. Such causes include but are not limited to the ENGINEER's negligence, errors, omissions, strict liability, or breach of contract. CLIENT agrees, as a part of its contract with its client to limit the liability of both CLIENT and ENGINEER in the same manner as above.
14. **Indemnification.**
  - a. ENGINEER agrees to the fullest extent permitted by law, to indemnify and hold CLIENT harmless from any loss, cost (including reasonable attorney's fees and costs of defense) or expense for property damage and bodily injury, including death, caused by ENGINEER's, or its employees' negligent acts, errors or omissions in the performance of professional services under this Agreement.
  - b. CLIENT agrees to the fullest extent permitted by law, to indemnify and hold ENGINEER harmless from any loss, cost (including reasonable attorney's fees and costs of defense) or expense for property damage and bodily injury, including death, caused solely by CLIENT's, its agents or employees, negligent acts, errors or omissions in the performance of professional services under this Agreement



- c. Any claim pursuant to this Agreement must be in writing, must set forth the facts upon which is based, and must be received by ENGINEER within two (2) years of the completion of the Services provided under the applicable Task Order.
  - d. Notwithstanding to the contrary, ENGINEER shall not be liable for:
    - (i) damage or injury to any subterranean structures (including, but not limited to, pipes, tanks, and telephone cables) or any existing subterranean conditions, or the consequences of such damage or injury, if such structures or conditions were known or should have been known to Client and were not shown, or were incorrectly shown, on plans furnished by Client to Consultant in connection with the Services or otherwise disclosed to ENGINEER;
    - (ii) any of Client's business losses or consequential damages, except as covered by insurance policy in effect pursuant to this agreement hereto;
    - (iii) any claim or demand against Client by any third party except as covered by the applicable insurance policies in effect pursuant to this agreement hereof; or
    - (iv) damages resulting from cessation of services under this agreement
15. **Compliance with Law.** Sub-consultant shall review laws, regulations, codes and standards in effect as of the date of this agreement that are applicable to the Subconsultant's services and shall exercise professional care and judgment to design in compliance with requirements imposed by governmental authorities having jurisdiction over the project.
16. **Subcontracts.** ENGINEER may not assign this agreement without written notification and approval from CLIENT, such approval not be unreasonably withheld. ENGINEER may, subcontract work to be performed hereunder, provided ENGINEER remains liable under this Agreement for all acts, errors, and omissions of such subcontractor, and agrees to indemnification for such acts, errors and omissions. Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties.
17. **Waiver.**
- a. No waiver of the terms, conditions and covenants of this Agreement shall be binding and effective unless the same shall be in writing signed by the parties.
  - b. A waiver of any breach of the terms, conditions and covenants of this Agreement shall be for that one time only and shall not apply to any subsequent breach.
18. **Severability.** If any provision, phrase or other portion of this Agreement should be determined by any court of competent jurisdiction to be invalid, illegal, or unenforceable in whole or in part, and such determination should become final, such provision, phrase, or other portion shall be deemed to be severed or limited, but only to the extent required to render the remaining provisions hereof enforceable; and, provided that the severing of any such provision will not materially change the substance of this Agreement. As so amended, this Agreement shall be enforced to the fullest extent possible to give effect to the intention of the parties expressed herein.
19. **Facsimile Transmissions.** The parties agree that each may rely, without investigation, upon the genuineness and authenticity of any document, including any signature or purported signature, transmitted by facsimile machine, without reviewing or requiring receipt of the original document. Each document or signature so transmitted shall be deemed an enforceable original. Upon request, the transmitting party agrees to provide the receiving party with the original document transmitted by facsimile machine; however, the parties agree that the failure of either party to comply with such a request shall in no way affect the genuineness, authenticity or enforceability of the document. Each party waives and relinquishes as a defense to the formation or enforceability of any contract between the parties, or provision thereof the fact that a facsimile transmission was used.
20. **Other Matters.** Should any requests or disputes arise that requires ENGINEER's services beyond the scope of services provided for in the Agreement and for which the Client gives prior approval to perform, the Client agrees to pay ENGINEER for staff time at ENGINEER's standard billing rates plus expenses, unless prior agreement has been reached between ENGINEER and the Client. Neither ENGINEER nor any employee shall be required to give testimony or attend meetings of any type (unless specified in the agreement) without prior arrangement as to fee, whether subpoenaed by the client or any other group.

**END**