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10 Hemingway Drive
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170 Commerce Way
Suite 200
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VIRGINIA
999 Waterside Drive
Suite 2525
Norfolk, VA 23510
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September 30, 2015

Dan Iacovelli
Town of Hopedale
PO Box 7
Hopedale, MA 02842

**Re: *Proposal for Aquatic Plant Mapping and development of a 5-year Management Program
Hopedale Pond, Hopedale, Massachusetts
ESS Proposal No. 15914***

Dear Mr. Iacovelli:

ESS Group, Inc. (ESS) is pleased to present the Town of Hopedale (the Town) with this proposal to provide aquatic plant mapping service and to develop an aquatic plant management program for Hopedale Pond. As you may know, ESS is very familiar with this pond having worked on this system extensively in the past. We will build upon what we already know to update our prior recommendations for managing weed growth within the pond based on the current conditions we will map. Our goal will be to deliver a focused and affordable plan of action to address weed growth that can serve as the basis for obtaining permits (an Order of Conditions from the Conservation Commission) to allow the Town to proceed with implementing our recommendations in the near future. This Scope of Work does not include permitting or weed management.

SCOPE OF WORK

Task 1. Comprehensive Plant Mapping

ESS will map all weeds within Hopedale Pond to identify all aquatic plant species present, map the coverage and density of weed growth, and map specific beds of non-native (exotic) plant species that warrant management attention.

ESS will assess the pond and prepare an electronic map (GIS based) quantifying the areas of non-native weeds. We will work with the Town to identify the most appropriate areas to focus management efforts should budget constraints be an issue with regard to managing the entire pond. This approach will allow us to recommend an approach that will maximize control while remaining consistent with the Town's available budget.

Deliverables:

ESS will prepare a GIS-based color map showing all major weed beds for use in designing, permitting, and implementing the management program.

Task 2. Development of a 5-Year Management Plan

ESS will work with the Town to develop recommendations for managing the aquatic vegetation at Hopedale Pond over the long-term. This Management Plan will be written to serve as a comprehensive Long-term Pond Management Plan that will include our specific recommendations, timeline, and costs for managing aquatic plants to improve habitat and recreational value. ESS will also include potential options for funding the recommended actions, although in many instances funding for lake management actions are often quite limited and highly competitive.



Mr. Dan Iacovelli
September 30, 2015

The Plan will include a range of options for consideration so that each viable option can be considered and included in whichever permit applications may be required. At a minimum, the Plan will include winter drawdown, dredging, herbicides, benthic barriers, algaecides, and/or harvesting.

Deliverables:

We will provide one electronic draft report to allow the Town to readily edit or comment on the document in "track-change" mode. We will then incorporate comments, as appropriate, to create a final electronic version for the Town to implement.

A Certified Lake Manager will complete each report in close consultation with the Town to ensure that treatment approaches and costs are reasonable, accurate, and reliable.

COSTS

The summary table below provides an estimated breakdown of costs by task.

TASK	TOTAL COST
Task 1 – Comprehensive Plant Mapping	\$2,450
Task 2 – Development of a 5-Year Management Plan	\$1,850
Total	\$4,300

CONDITIONS OF ENGAGEMENT

ESS is eager to begin this work upon the Town's approval of this proposal and authorization to proceed. ESS will perform all tasks as described above on a fixed fee basis at an estimated cost of \$4,300. If the Town requires or requests additional efforts beyond this Scope of Work ESS is willing to perform the additional work on a time and materials basis. This proposal is valid for a period of 30 days; however, in order to map the weeds present in the pond effectively, this work will need authorization in less than one week.

ACCEPTANCE

You may accept this proposal by signing in the space provided below and returning an executed copy to us (via fax, email, or regular mail). The executed proposal and the referenced attachments will serve as the entire agreement between ESS and the Town.

We appreciate the opportunity to serve you. Please contact the undersigned at (401) 330-1224 if you have any questions.

Sincerely,

ESS GROUP, INC.

A handwritten signature in blue ink, appearing to read "Carl Nielsen".

Carl D. Nielsen, CLM
Vice President



Mr. Dan Iacovelli
September 30, 2015

ACCEPTANCE OF ESS GROUP, INC. PROPOSAL AND AUTHORIZATION TO PROCEED

This proposal, including the attached Terms and Conditions and ESS Labor Billing Rate and Direct Cost Table, is hereby authorized and accepted as executed below by the Town of Hopedale. The signatory below also hereby warrants that he/she has full authority to act for, in the name of, and on behalf of the Town of Hopedale to authorize this Agreement.

Signature of Client or Authorized Representative for the Town of Hopedale

Print Name/Title

Date of Authorization



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ESS GROUP, INC. STANDARD BILLING RATE TABLE**Consulting Labor Fees and Direct Costs**

ESS Group, Inc. (ESS) will complete the described scope of services in accordance with ESS Standard Terms and Conditions and the following labor consulting rates and direct costs. Please note that this rate schedule is confidential and for customer internal use only. ESS reserves the right to adjust these rates without notice.

CONSULTING LABOR FEES

Billing Category	Hourly Billing Rate
Consulting/Testifying Expert Services	\$275.00
Principal Scientist, Engineer	\$215.00
Senior Scientist, Engineer	\$195.00
Scientist, Engineer VII	\$175.00
Scientist, Engineer VI	\$165.00
Scientist, Engineer V	\$155.00
Scientist, Engineer IV	\$145.00
Scientist, Engineer III	\$135.00
Scientist, Engineer II	\$115.00
Scientist, Engineer I	\$100.00
Technician	\$ 90.00
Administrative Services	\$ 75.00

DIRECT COSTS

Services and Costs	Rate
Subconsultant Management Services	Cost plus 15%
Reimbursable Expenses	Cost plus 10%
Specialty Software/Modeling Applications	\$10.00/hour
Specialty Field Equipment and Software	Rental rates as priced
Communication Charge (Telecommunications, Data/File Transfer, Site Hosting, HS Internet Access, Web Access)	3.5% of ESS Labor Charge
Reprographic Services and Mailing	As priced
Large Format Black & White Plot or Scan	\$3.50/linear foot
Large Format Color Plot or Scan	\$10.00/plot



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ESS GROUP, INC.**STANDARD TERMS AND CONDITIONS****1.0 THE SERVICES**

ESS Group, Inc. ("ESS") proposes to perform certain professional services (the "Services") for the client (the "Client") as more fully set forth in the attached proposal or scope of work (the "Proposal"). ESS will provide the Services to the Client at the charges specified in the Proposal and the Client agrees to pay such charges in accordance with these Standard Terms and Conditions. These Terms and Conditions are hereby incorporated into, and are an integral part of, the Proposal and any subsequent Task Orders approved by the Client under this contract for Services (the Proposal and these Standard Terms and Conditions being collectively referred to hereinafter as the "Agreement").

2.0 BILLINGS, PAYMENTS AND CREDIT TERMS

Invoices for the Services shall be submitted, at ESS's option, either on a monthly basis or upon completion of certain project goals or deliverable milestones. All such invoices shall be payable upon receipt of the invoice. A late payment charge will automatically be assessed at a rate of one and one-half percent (**1.5%**) per month on any outstanding balance not paid within thirty (30) days of the invoice date.

Application of the late payment charge indicated above as a consequence of Client's late payment(s) does not constitute any willingness on the part of ESS to finance Client's operation, and no such willingness should be inferred. The Client agrees that if the Client fails to pay an invoice due to ESS within thirty (30) days after the date thereof, or fails to meet satisfactory credit criteria, ESS may, without waiving any other claim or right against the Client, and without liability whatsoever to the Client, terminate the Agreement and its performance of the Services. Termination shall not relieve the Client of its obligation to pay amounts incurred up to the date of termination.

Client's obligation to pay for the Services performed under this Agreement is in no way contingent upon Client's ability to obtain financing, zoning, approval of governmental or regulatory agencies, final adjudication of a lawsuit in which ESS is not involved, or upon Client's successful completion of the project, unless otherwise stated in this Agreement or other Agreements for which ESS and the Client may consummate.

In the event that ESS places any outstanding invoices in the hands of an agency or an attorney for collection, the Client shall reimburse ESS for all costs and expenses of collection, including the fees and expenses of its attorneys and court costs, if any. ESS also reserves its right, in addition to pursuing its other remedies provided herein, to file a mechanic's lien or other lien or claim of any kind against Client's property in accordance with applicable laws and regulations.

ESS may conduct a credit review or require a certain fee retainer from the Client prior to the initiation of Services authorized by the Client in the event the Client does not have an established credit record with ESS or that the Client's credit record for previous work conducted by ESS was not satisfactory to ESS. Any fee retainer funds shall be held by ESS in a non-interest bearing account and applied to the last invoice for Services under this Agreement or until such other time an acceptable credit record has been established.

Based upon the results of the credit review, ESS may require alternative payment terms other than those indicated above. If satisfactory credit terms cannot be agreed upon, ESS may, without liability whatsoever to the Client, either withhold work hereunder until satisfactory arrangements are made or terminate the Agreement and its performance of the Services and any and all related agreements between the Parties.

3.0 OWNERSHIP OF REPORTS AND DOCUMENTS

All reports and documentation prepared for or by ESS shall remain property of ESS until invoices for the Services are paid in full. All backup documents (i.e. field notes, internal calculations, drafts, etc.) shall remain property of ESS. Notwithstanding the foregoing, ESS shall treat its performance of the Services and all information generated in the performance of the Services, whether the property of Client or ESS, as confidential, and shall not release such information to any governmental agency or third party without the written consent of Client, unless the release of such information is necessary to prevent injury to individuals or the environment.

Upon payment in full for Services, Client shall use ESS's reports and documentation only for the originally intended purpose for which it was prepared. Client shall not transmit, copy, reproduce or otherwise transfer the work product to a third party for use without the express prior written consent of ESS. If ESS work product is subsequently used, transferred or modified by the Client without the prior written consent of ESS, the Client hereby agrees to indemnify and hold ESS harmless from any and all liability and/or claims or damages against ESS, its officers, employees, subcontractors/subconsultants and any successors in interest as a result of this action.





4.0 RIGHT OF ENTRY

The Client hereby grants to ESS, or warrants that permission has been duly granted for, a right of entry, from time to time, by ESS, its staff, and subcontractors/subconsultants, to enter upon the Site (as hereinafter defined in Section 7 below) for the purpose of performing all Services. Client understands that even though ESS will take reasonable measures to return the Site to the condition it was in before ESS commenced its activities, the Client recognizes that the use of exploration equipment may alter or affect the terrain in the area under investigation. Accordingly, the Client accepts such risks, and ESS will not be liable for any effect, alteration or damage arising out of such explorations, except damage caused by ESS's negligence. The cost of restoration of the Site because of any such damage has neither been calculated nor included in ESS's fees. The Client agrees to indemnify and hold ESS harmless for all such claims for damages by others.

ESS will exercise a reasonable degree of care in seeking to locate subterranean structures in the vicinity of proposed subsurface explorations or other service activities at the Site. ESS will contact public utilities and review plans, if any, provided by public utilities and public agencies. Plans and information about the Site provided by the Client shall also be reviewed. So long as ESS observes such standard of care, ESS will not be liable for any claims, damage, injury or interference with any subterranean structure, pipe, tank, cable or any other element or condition if not called to ESS's attention prior to commencement of work, or which is not shown, or accurately located, on any plans furnished to ESS by the Client or by any other party (public or private).

ESS agrees to schedule its activities to minimize interference with the on-going operations and activities of the Client or any third-party whose property may be the subject of the Services. ESS shall, and shall cause its subcontractors/subconsultants, to abide by all of the Client's Site rules and regulations regarding the protection of the health and safety of employees and third-parties, provided it shall be the Client's obligation to make such rules and regulations known to ESS prior to ESS commencing the Services at the Client's Site.

5.0 LIMITED WARRANTY

The Client realizes that the Services require decisions which are not based on pure science or engineering, but rather upon best professional judgment considerations. ESS shall perform the Services in accordance with generally accepted professional practices as observed by members of the profession in the area under similar conditions. The Client agrees that the Services shall be rendered without any other warranty, express or implied. The Client further agrees that the government regulatory review application process for Site activity permits can be complex, involving considerable public participation and political influences, and at times, public opposition can be severe and prevent or delay actual permit issuance to the Client, regardless of the technical soundness of the project. The Client agrees that in such projects, ESS makes no express or implied representation that a Site activities permit will be issued.

In the event there are apparent errors or omissions in the Services as mutually agreed to by ESS and Client, ESS's sole obligation to Client shall be to timely correct such apparent errors or omissions at its own cost as may be reasonably determined by ESS and Client. ESS's obligation to correct any such errors or omissions as set forth in the preceding sentence shall be limited to only those Services performed under direct contract, control and supervision of ESS and its subcontractors/ subconsultants. ESS's obligation shall not extend to errors or omissions due to limitations or restrictions by Client or other third parties that may inhibit or prohibit ESS's use standard of good science, engineering and generally accepted professional practices as stated above.

6.0 SERVICES EXCLUDED

- A. The Services shall not include any work not expressly set forth in writing in the Agreement. ESS assumes no duty to the Client to perform any work not included in the Agreement, unless the Agreement is amended in writing by ESS and the Client to perform such work.
- B. Nothing contained in this Agreement shall be construed or interpreted as requiring ESS to assume the status of a generator, storer, operator, treater, transporter or disposal facility as those terms are used within the Resource Conservation and Recovery Act, 42 USCA Section 6901, et. seq. (RCRA), or as such terms (or similar terms) are used in any state statute of similar effect governing the treatment, storage, transportation or disposal of waste.
- C. The Services are limited to work specified in the Agreement or any subsequently approved Task Orders and ESS makes no representations or warranties, express or implied, other than those expressly stated in the Agreement.

7.0 INFORMATION DISCLOSURES

- A. The Client shall provide to ESS all relevant information in its possession, custody, or control, or reasonably available to it, which relates to the project location (the "Site"), its present and prior uses, or to activities at the Site which may affect the Services, including, but not limited to, the following:





- I. A legal description of the Site, including boundary lines, and an accurate existing conditions site plan.
 - II. Historical information as to the prior uses and owners of the Site, including any maps or plans.
 - III. Identification of the location of utilities, underground tanks, and other structures and the routing thereof at the Site, including available plans of the Site. This also includes any information that may suggest or specify the possibility of encountering unknown, unmarked, or undocumented subsurface structures or hazardous conditions.
 - IV. A description of the types and duration of activities which were conducted at the Site over its use history or at any time by the Client or by any person or entity which would relate to the Services.
 - V. Identification, by name, quantity, location, and date, of any release, storage or handling of hazardous substances at, on or under the Site both prior to and during Services activities.
- B. Notification and Reporting: to the extent required by law, the Client shall be solely responsible for promptly reporting regulated conditions or events, including, without limitation, the discovery of the release of hazardous substances at the Site to the appropriate public authorities in accordance with applicable laws and regulations. The Client shall indemnify and hold harmless ESS, its officers, employees, subcontractors/subconsultants and any successors in interest for any and all claims arising from its responsibility for notifying or informing regulatory authorities concerning any such regulated conditions or events in the time frames or procedures required by applicable law or regulations.
- C. Reliance: The services, information, and other data required by this Section 7 to be furnished by the Client shall be at the Client's sole cost and expense. Unless Client informs ESS to the contrary, ESS may rely upon all data, plans or information furnished by the Client as accurate and complete for the purposes of delivery of approved ESS Services.
- D. Manifest Signing: The Client, or a party designated by the Client, other than ESS, shall sign any and all required manifests relating to the transportation, treatment and disposal of all wastes associated with the activities of the Client.

8.0 DISCOVERY OF UNANTICIPATED POLLUTANT RISKS

- A. If, while performing the Services, ESS discovers pollutants or hazardous materials, substances, or Site conditions that pose unanticipated or unacceptable risks ("Unforeseen Conditions"), it is agreed that the scope of the Services, schedule for completion, and the estimated project cost shall be reconsidered and that the Agreement shall immediately become subject to renegotiation or termination.
- B. In the event that the Agreement is terminated because of the discovery of Unforeseen Conditions, it is agreed that ESS shall be paid, without set-off or reduction, for labor performed, subcontractor/subconsultants services and reimbursable charges incurred up to the date of termination of the Agreement, including, if necessary, any additional labor or reimbursable charges incurred for Site restoration or equipment and labor demobilizing from the Site.
- C. The Client agrees that the discovery of Unforeseen Conditions may make it necessary for ESS to take immediate measures to protect the health and safety of its employees and subcontractors/subconsultants. The Client authorizes ESS to take such immediate measures that ESS, in its sole discretion, deems necessary to preserve and protect the health and safety of ESS employees and subcontractors/subconsultants; provided however, nothing contained herein shall impose an obligation upon ESS to perform any such acts.
- D. In the event that soil, water or groundwater samples and/or other subsurface structures or materials contain or are suspected to contain pollutants, or hazardous materials or substances, or constituents hazardous or detrimental to health, safety, or the environment as defined by federal, state or local statutes, regulations or ordinances, ESS will, after completion of testing, return such samples and materials to the Client or the Site if the testing laboratory will not dispose of these samples as part of their operating procedures. If the Client requests and approves ESS to provide labor and materials to properly dispose these potentially contaminated samples, substances or sample residuals, the Client agrees to compensate ESS for those fees and charges incurred at the time of disposal. The Client also hereby agrees to indemnify and hold ESS or any successors in interest harmless for any liability, claim or demand associated with their disposal of this material or substances
- E. All laboratory and field equipment used by ESS in performing the Services that becomes contaminated will be cleaned and the Client agrees to reimburse ESS for all costs and expenses of such cleaning. Contaminated consumables will be disposed of and replaced and the Client agrees to reimburse ESS for all costs and expenses related to such disposal. Equipment (including tools) which cannot be reasonably decontaminated shall become the property and responsibility of the Client. All such equipment shall be delivered to the Client. The Client agrees to pay to ESS the fair market value of any such equipment which cannot reasonably be decontaminated.
- F. Client understands that the discovery of Unforeseen Conditions and/or the taking of preventive measures relative to these substances and conditions may result in a reduction of the value of the Site upon which Unforeseen Conditions



are found to exist or the preventive measures are taken. Accordingly, Client waives any claim against ESS and its subcontractors/subconsultants and agrees to defend, indemnify and hold harmless ESS, its subcontractors/subconsultants, and any successors in interest from any claim based upon the diminished value of real property allegedly arising from the discovery of Unforeseen Conditions or the taking of a preventive measures, unless such claim is based upon the negligent performance of Services by ESS under this Agreement.

9.0 PERFORMANCE AND FORCE MAJEURE

ESS shall make reasonable efforts to complete the Services in a timely and orderly manner. ESS will not be liable to the Client for delays in performing the Services, nor for the direct or indirect cost resulting from such delays, which may result from labor strikes, riots, fires, natural disasters, wars, acts of governmental authorities, adverse weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of ESS.

10.0 LIMITATION OF PROFESSIONAL LIABILITY

The Client agrees that ESS's liability to the Client based upon or arising out of ESS's breach of this Agreement or negligent professional acts, errors or omissions is limited, in amount, to the lessor of (i) aggregate sum of \$50,000 or (ii) ESS's aggregate fee for the Services (excluding expenses). The Client agrees that to the fullest extent permitted by law, this limitation applies to all injuries, damages, claims, losses, expenses and defense costs, whether based in contract, negligence, strict liability, attorneys' fees, statutory, trespass, indemnity, misrepresentation or any other theory of liability or causes whatsoever.

No claim shall be valid if presented to ESS more than one (1) year after substantial completion of the Services or, if shorter, the applicable statute of limitations period. ESS, its affiliates, officers, directors, employees or agents shall not be liable for lost profits, loss of use of property, diminution of value of property or goods, delays, cost to obtain replacement samples, or other special, indirect, incidental, consequential, punitive, exemplary or multiple damages whether caused by ESS's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, or other cause or causes whatsoever.

11.0 INSURANCE

ESS represents that it is protected by and has in place the following forms and amounts of insurance:

Form of Insurance		Limits
General Liability	Coverage is on an occurrence basis and includes Premises/Operations, Products/Completed Operations, Personal & Advertising Injury, Medical Payments	\$1,000,000 Each Occurrence \$2,000,000 Aggregate
Workers Compensation	Coverage includes all state and federal requirements	Statutory
Employers Liability		\$1,000,000 Each Accident \$1,000,000 Disease-Policy Limit \$1,000,000 Disease-Each Employee
Automobile Liability	Coverage includes Owned, Non-Owned and Hired Automobile	\$1,000,000 Combined Single Limit
Umbrella	Coverage on an Umbrella form over General Liability, Automobile Liability and Employers Liability	\$5,000,000 Each Occurrence and Aggregate
Professional Liability		\$1,000,000 Each Occurrence \$2,000,000 Aggregate
Environmental Coverage	Pollution Liability Coverage	\$1,000,000 Each Occurrence \$2,000,000 Aggregate

ESS shall furnish Client with Certificate(s) of Insurance upon Client's request. If Client requires excess insurance coverage in addition those stated above, ESS may purchase project specific insurance at Client's request if commercially available, provided that Client pays the premium and costs to obtain additional coverage.



12.0 INDEMNIFICATION

To the fullest extent permitted by law, Client agrees to indemnify, defend and hold harmless ESS, its officers, directors, employees and agents, including its affiliates and subsidiaries, and any successors in interest from and against all liabilities, losses, damages, demands, claims, suits, fines and penalties, attorneys' fees and other costs of settlement and defense, which liabilities, losses, damages, demands, claims, suits, fines and penalties or costs arise out of or are related to this Agreement or the Services, except to the extent they are caused by ESS's negligence.

13.0 TERMINATION

ESS or Client may terminate this Agreement upon thirty (30) days prior written notice to the other party. If the Agreement is so terminated, ESS shall be compensated for all completed Services rendered up to and including the day of termination as well as any reasonable labor and materials costs for the collection, preparation and transfer of ESS services or product to the Client after termination of this Agreement.

ESS or Client may immediately terminate this Agreement upon an Event of Default, as defined below. Upon a termination of this Agreement for an Event of Default, ESS shall be compensated for all completed Services rendered up to and including the day of termination as well as any reasonable labor and materials costs for the collection, preparation and transfer of ESS Services or product to the Client after termination of this Agreement. Each of the following events shall constitute an "Event of Default":

- A. ESS or Client fail to observe, perform, or comply with any material term, covenant, agreement, or condition of this Agreement which is to be observed, performed, or complied with by ESS or Client, of such failure to continue uncured for fourteen (14) calendar days after ESS or Client gives the other party written notice of any failure and specified the nature of such failure.
- B. ESS or Client commits any fraud, misrepresentation, breach of fiduciary duty, willful misconduct, or intentional breach of any provision of this Agreement.

14.0 INDEPENDENT CONTRACTOR STATUS

ESS, its associates, subconsultants and subcontractors shall act as and be deemed to be independent contractors for all purposes of this Agreement and shall not be deemed to be agents, assigns, employees, joint venturers, partners or principals of Client, or its employees, officers, directors, representatives or affiliates. This Agreement is not intended to, and shall not be construed to, create an employer-employee relationship between ESS and Client for any purpose including under the provisions of any workers' compensation law or other laws.

15.0 EMPLOYEE NONSOLICITATION

ESS and Client agree that during the term of this Agreement, and for a period of one (1) year following the date of completion or termination of this Agreement, for any reason whatsoever, they shall not directly or indirectly solicit or encourage any employee of either Party to this Agreement who was employed during the term hereof to leave employment of the other Party to this Agreement, or employ any such employee unless such employee has ceased to be employed by the other Party for a period of at least one (1) year. If either party violates this condition, whether by direct or indirect solicitation or any other manner or encouragement, ESS or Client hereby agree to pay a penalty of three (3) times the current salary or rate of pay of the departing employee within thirty (30) days of notice of resignation by that employee, in addition to all other rights and remedies provided herein.

ESS and Client hereby agree that irreparable damage would occur in the event that any of the terms and provisions of this Section were not performed in accordance with their specific terms or were otherwise breached. Client further acknowledges that the injury to ESS resulting from any violation by it of any of the terms and provisions contained in this Section will be of such character that it cannot be adequately compensated by money damages. Accordingly, ESS may, in addition to pursuing its other remedies provided herein, obtain an injunction to prevent breaches of this Section and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction. ESS may also recover damages and reasonable attorneys' fees and legal costs of ESS's counsel expended to enforce this Section.

16.0 NOTICES

Any notice required or permitted by this Agreement shall be deemed duly given if sent in writing, certified or registered mail or by other commercial delivery service with return receipt requested or other written acknowledgement of receipt to the addresses set forth in the Proposal, or such other addresses as the Parties may designate by written notice.



17.0 NON-ASSIGNMENT

This Agreement and no rights or obligations under this Agreement may be assigned to any other person, or entity by operation of law, or otherwise, without the express prior written consent of ESS.

18.0 BUSINESS OPPORTUNITIES

This Agreement shall in no way be construed to (i) preclude in any way either Party from pursuing any business opportunities or (ii) establish any relationship with respect to such business opportunities. Nothing in this Agreement shall preclude ESS from working with other entities for the business of providing environmental consulting and engineering services.

19.0 GENERAL

- A. This Agreement may not be and shall not be deemed or construed to have been modified, amended, rescinded, canceled, or waived, in whole or in part, except by written agreement signed by ESS and the Client.
- B. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes any previous communications, representations or agreements by either party, whether written or oral and takes precedence over any terms and conditions that may be contained in any purchase order, or other document issued by the Client.
- C. No Party may be deemed to have waived any right, power or privilege under this Agreement or any provision of this Agreement unless such waiver is duly executed in writing any acknowledged by the Party to be charged with such waiver. The failure of any Party to enforce at any time any of the provisions of this Agreement may in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this Agreement or any part of this Agreement, or the right of any Party to subsequently enforce each and every such provision. No waiver of any breach of this Agreement may be held to be a waiver of any other or subsequent breach.
- D. The Parties agree that the provisions of Sections 12 and 15 survive the completion and/or termination of this Agreement. In addition, all provisions of this Agreement allocating responsibility or liability between ESS and Client shall survive completion of services and/or the termination of this Agreement.
- E. If either Party makes a claim against the other Party for any alleged dispute, breach, default, negligent error, omission or act arising out of the obligations of the Parties hereunder that cannot be mutually resolved by negotiation or mediation and without resort to litigation and such Party fails to prove the claim, such Party shall pay all costs incurred by the other Party in defending itself against the claim, including personnel costs, attorneys' fees, court costs and other claim related expenses. This Agreement shall be governed in all respects by the laws of the Commonwealth of Massachusetts and each Party hereby consents to the jurisdiction of the federal and state courts of the Commonwealth for resolution of any dispute hereunder.
- F. If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect.

ESS IS AN EQUAL OPPORTUNITY – AFFIRMATIVE ACTION EMPLOYER