



CITY OF BROOKHAVEN
ROUTING FOR CONTRACT SIGNATURES

Contract documents should be reviewed and signed in appropriate areas. All contracts must be sealed with The City of Brookhaven Seal or a Notary.

RE: Contract RFQ Peachtree Creek Greenway Trail from Atlanta to North Druid Hill Road – Phase II

Vendor Name: Heath and Lineback Engineers, Inc.

Contract Term: 12/31/2020 and 1 Renewal (if needed)

Amount: \$585,898.00

Council Approved: Yes

E-Verify: Yes

COI: N/A

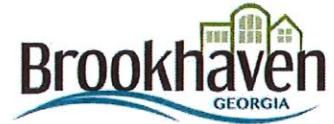
Bond(s): N/A

PURCHASING MANAGER  Date 7/6/2020

CITY REPRESENTATIVE Approved by Date 7/8/2020
Council 6-23-2020
S. Hottel, Clerk

All contracts must be signed by the vendor first before routing to staff.
Once contracts are fully executed

1. City Clerks receives one (1) original
2. Vendor or Company receives one (1) original
3. Purchasing Manager received one (1) original



CONTRACT FOR PROFESSIONAL SERVICES
Design Engineering Services
Peachtree Creek Greenway Trail from Atlanta to North Druid Hill Road – Phase II
GDOT PI# 0016053

This **CONTRACT** made and entered into this 23rd day of June, 2020 by and between the **City of Brookhaven**, Georgia (Party of the First Part, hereinafter called the "City"), and **Heath and Lineback Engineers, Inc.** (Party of the Second Part, hereinafter called the "Service Provider" or "Contractor").

NOW THEREFORE, for and in consideration of the mutual promises and obligations contained herein and under the conditions hereinafter set forth, the parties do hereby agree as follows:

1. TERM:

The services to be performed under this Contract shall commence upon execution of this Contract. The initial term of this Contract shall be through December 31, 2020. This Contract shall terminate absolutely and without further obligation on the part of the City on December 31, 2020 and each December 31 of each succeeding and renewed year, as required by O.C.G.A. §36-60-13, as amended, unless terminated earlier in accordance with the provisions of this Contract.

This Contract may be renewed for one (1) additional twelve-month term, upon the same terms and conditions, as provided for in this Contract, unless terminated by the City, by notice to service provider or termination and non-renewal by December 31 of the Contract year. This Contract will terminate on December 31, 2020.

2. ATTACHMENTS:

The following documents are attached and are specifically incorporated into this Contract by reference:

Exhibit A: General Conditions
Exhibit B: Fees/Rate
Exhibit C: Scope of Services
Exhibit D: Timeline
Exhibit E: Contractor's Affidavit and Agreement
Exhibit F: Drug Free Workplace
Exhibit G: Purchasing Policy Addendum
Exhibit H: Title VI Project Acknowledgment Form

3. PERFORMANCE:

Service Provider agrees to furnish all skill and labor of every description necessary to carry out perform the services in accordance with the Contract Documents (the "work").

4. PRICE:

As full compensation for the performance of this Contract, the City shall pay the Service Provider for the actual quantity of work performed. The amount shown on Exhibit B is the total obligation of the City pursuant to O.C.G.A section 36-60-13(a)(3). The fees for the work to be performed under this Contract shall be charged to the City in accordance with the rate schedule shown on Exhibit B. The City agrees to pay the Service Provider following receipt by the City of a detailed invoice, reflecting the actual work performed by the Service Provider.

5. INDEMNIFICATION AND HOLD HARMLESS:

[See Section 13 of Exhibit A. --- General Conditions]

Service Provider further agrees to protect, defend, indemnify, and hold harmless the CITY, its council members, officers, agents, and employees from and against any and all claims or liability for compensation under the Worker's Compensation Act arising out of injuries sustained by any employee or subcontractor of the Service Provider, as allowed under the law.

6. TERMINATION FOR CAUSE:

The City may terminate this Contract for cause upon ten (10) days prior written notice to the Service Provider of the Service Provider's default in the performance of any term of this Contract. Such termination shall be without prejudice to any City's rights or remedies provide by law.

7. TERMINATION FOR CONVENIENCE:

The City may terminate this Contract for its convenience at any time upon 30 days written notice to the Service Provider. In the event of the City's termination of this Contract for convenience, the Service Provider will be paid for those services actually performed. Partially completed performance of the Contract will be compensated based upon a signed statement of completion to be submitted by the Service Provider who shall itemize each element of performance.

8. TERMINATION FOR FUND APPROPRIATION:

The City may unilaterally terminate this Contract due to lack of funding at any time by written notice to the Service Provider. In the event of the City's termination of this Contract for fund appropriation, the Service Provider will be paid for those services actually performed. Partially completed performance of the Contract will be compensated based upon a signed statement of completion to be submitted by the Service Provider which shall itemize each element of performance.

9. CONTRACT NOT TO DISCRIMINATE:

During the performance of this Contract, the Service Provider will not discriminate against any employee or applicant for employment because of race, creed, color, color, sex, national origin, age, or disability which does not preclude the applicate or employee from performing the essential functions of the position. The Service Provider will also, in all solicitations or advertisements for employees placed by qualified applicants, consider the same without regard to race, creed, color, sex, national origin, age, or disability which does not preclude the applicant from performing the essential functions of the job. The Service Provider will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provision will be binding upon each sub-service providers for standard commercial supplies of raw materials.

10. ASSIGNMENT:

The Service Provider shall not sublet, assign, transfer, pledge, convey, sell or otherwise dispose of the whole or any part of this Contract or his right, title, or interest therein to any person, firm, or corporation without the previous consent of the City in writing.

11. WAIVER:

A waiver by either party of any breach of any provision, term, covenant, or condition of this Contract shall not be deemed a waiver of any subsequent breach of the same or any other provision, term, covenant, or condition.

12. SEVERABILITY:

The parties agree that each of the provisions included in this Contract is separate, distinct and severable from the other and remaining provisions of this Contract and that the invalidity of any Contract provision shall not affect the validity of any other provision or provisions of this Contract.

13. GOVERNING LAW:

The parties agree that this Contract shall be governed and construed in accordance with the laws of the State of Georgia. This Contract has been signed in DeKalb County, Georgia.

14. MERGER CLAUSE:

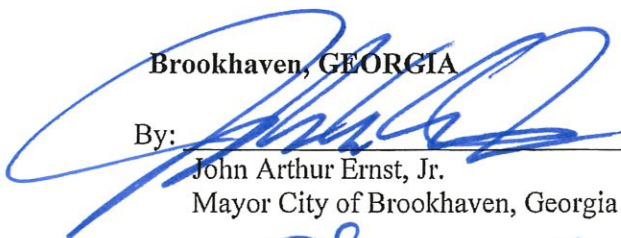
The parties agree that the terms of this Contract included the entire Contract between the parties, and as such, shall exclusively bind the parties. No other representations, either oral or written, may be used to contradict the terms of this Contract.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized agents, have caused this **CONTRACT** to be signed, sealed and delivered.

Signatures on the following page.

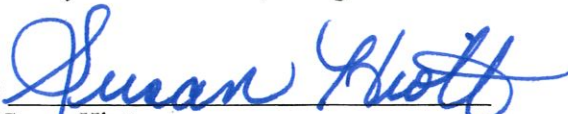
Brookhaven, GEORGIA

By:



John Arthur Ernst, Jr.
Mayor City of Brookhaven, Georgia

ATTEST:



Susan Hiott
City Clerk

APPROVED AS TO FROM:



Chris Balch., City Attorney

SERVICE PROVIDER:

Signature 

Date June 29, 2020

Print Name John A. Heath

Print Title President

ATTEST: 

Date June 29, 2020

Signature

Print Name W. Allen Krivsky

Print Title Sr. Vice President/COO

Brookhaven, GEORGIA

By: _____

John Arthur Ernst, Jr.
Mayor City of Brookhaven, Georgia

ATTEST: _____

Susan Hiott
City Clerk

APPROVED AS TO FROM:

See attached

Chris Balch., City Attorney

SERVICE PROVIDER:

Signature John A. Heath

Date June 29, 2020

Print Name John A. Heath

Print Title President

ATTEST:

W. Allen Krivsky

Date June 29, 2020

Signature

Print Name W. Allen Krivsky

Print Title Sr. Vice President/COO

EXHIBIT A

GENERAL CONDITIONS

1. SCOPE OF WORK

The Contract will be to provide services to the City in accordance with the Contract Documents. All work shall be performed in accordance with the Scope of Services attached hereto as Exhibit B.

2. REGULATIONS

- 2.1 The Contractor shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance of the work specified herein.
- 2.2 The Contractor shall obtain all permits, licenses and certificates, or any such approvals of plans or specifications as may be required by Federal, State and local laws, ordinances, rules and regulations, for the proper execution of the work specified herein.
- 2.3 During the performance of this Contract, the Contractor shall keep current and, if requested by the City, provide copies of any and all licenses, registrations or permits required by applicable governing agencies. The Contractor shall keep a copy of any and all licenses, registrations and permits on the job site while performing the Contract work.

3. INTENTIONALLY OMITTED

4. CONTRACTOR'S PERSONNEL

- 4.1 The Contractor will abide by all State and Federal regulations on wages and hours of an employee dealing with the employment relationship between the Contractor and its subsidiaries or related parties and its employees, including but not limited to the Federal National Labor Relations Act, the Federal Fair Labor Standards Act, the Federal Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act.
- 4.2 The Contractor shall require all prospective employees to show proof of citizenship, or proof from the United States Immigration and Naturalization Service of valid entry permits and/or work permits for legal aliens and proof that such legal aliens are eligible to be employed in the United States. This includes any requirement for participation in the DHS e-Verify or SAVE program.
- 4.3 Should the Contractor engage employees who are illiterate in English, it will be the Contractor's responsibility and obligation to train such employees to be able to identify and understand all signs and notices in and/or around the areas that relate to them or the services being performed by them pursuant to this Contract. In addition, the Contractor will have someone in attendance at all times who can communicate instructions to said employee.
- 4.4 The Contractor shall maintain a drug-free workplace within the meaning of the Georgia Drug-free Workplace Act. No employee shall be hired by a Contractor for work on the City's premises prior to such employee having tested negative for drugs. In addition, existing employees of the Contractor must be subject to drug testing by the Contractor upon reasonable suspicion of drug use. Results of all such drug tests are to be retained by the Contractor. Copies shall be provided to the City, if requested.

- 4.5 The Contractor shall transfer promptly from the City any employee or employees that the City advises are not satisfactory, and replace such personnel with employees satisfactory to the City; but in no event shall the City be responsible for monitoring or assessing the suitability of any employee or agent of the Contractor.
- 4.6 The Contractor's employees shall be instructed that no gratuities shall be solicited or accepted for any reason whatsoever from the tenants, customers or other persons at the City.
- 4.7 A valid driver license (Commercial Driver License, if applicable) will be required of all personnel operating motor vehicles or motorized equipment on roadways in or around the City.
- 4.8 While working on city property all Contractors' employees shall wear neat-appearing business casual attire or uniforms with the company name and/or logo and footwear of a style that complies with all legal and safety requirements, including and without limitation, the requirements of OSHA.
- 4.9 Designation of Project Manager - The Contractor shall designate a Project Manager acceptable to the City for all purposes related to the work. The initial Project Manager shall be (Project Manager Name).
 - 4.9.1 The Project Manager shall be fully responsible for the Contractor meeting all of its obligations under this Contract. The Project Manager shall provide the City with an appropriate status report on the progress of the project.
 - 4.9.2 The Project Manager shall be available, as reasonably required, to be on-site during necessary times. Such times shall be discussed between the Project Manager and the City, but the final required times will be at the City's discretion.
 - 4.9.3 In the event that the designated Project Manager terminates employment with the Contractor, or is requested by the City to be removed from the role of Project Manager (as provided in Section 4.5), the position shall be assumed by an individual with equivalent qualifications, experience, and knowledge. Such replacement shall require the City's prior approval.
- 4.10 The process by which the implementation partner requests the removal of a team member from the project. If a Contractor replaces a proposed team member, the Contractor shall replace that team member with a new team member of similar experience. The City reserves the right to accept or reject any proposed or replacement team member, with or without cause, at any time during the duration of the project.

5. TOOLS AND EQUIPMENT

It shall be the sole responsibility of the Service Provider to provide for all tools, parts, and equipment necessary to perform work under this Contract.

6. PERFORMANCE REQUIREMENTS

- 6.1 The Service Provider shall perform all of its obligations and functions under the Contract in accordance with the Contract specifications and industry standards. The Service Provider shall adjust and coordinate its activities to the needs and requirements of the City and perform its activities so as not to annoy, disturb, endanger, unreasonably interfere with or delay the operations or activities of the City.
- 6.2 The Service Provider's personnel shall perform work in compliance with all Federal, State, and City of Brookhaven regulations.
- 6.3 Dates for commencement and completion of work shall be coordinated with the City's Authorized Representative (CAR).

- 6.4 Any work required beyond that which is specified herein shall be reported in advance to the City. At no time shall work beyond the scope be performed without prior written authorization from the City.
- 6.5 The Service Provider shall utilize maximum safety procedures. Tools and equipment will be in a good state of repair, safe to use, and be used in the manner in which they were intended. The Service Provider is required to inform all workers and concerned persons of the Material Safety Data on all products being utilized on this project. No materials or equipment will be left unattended at any time.

7. CONFIDENTIAL INFORMATION

- 7.1 In the course of performing the contract work, the Service Provider may gain access to security-sensitive and other sensitive information of the City.
- 7.2 The Service Provider agrees to hold all City data and information not subject to Georgia Open Records Act in confidence and to make such information known only to its employees and subcontracts who have a legitimate need to know such information and only after advising such persons of the Service Provider's non-disclosure obligations.
- 7.3 The Service Provider shall seek the City's prior written consent before using for any purpose other than the fulfillment of the Service Provider's obligations hereunder, or before releasing, disclosing, or otherwise making such information available to any other person.
- 7.4 The Service Provider shall employ such practices and take such actions to protect the City's information not subject to Georgia Open Record Act from unauthorized use or disclosure as the Service Provider employs and takes to protect its own information, but in no event shall the Service Provider use less than reasonable efforts to protect the City's information.
- 7.5 The provisions of this Section shall survive the expiration or earlier termination of the Contract for a period of up to twelve (12) months.

8. USE OF PREMISES

During the progress of the work specified herein, to the extent any work is performed on the City's premises, the Service Provider shall keep the premises free from accumulation of waste materials, and other debris resulting from, work and about the premises as well as tools, equipment, machinery and surplus material, and leave the site clean and ready for occupancy by the City.

9. SAFETY AND PROTECTION

The Service Provider shall be solely and completely responsible for initiating, maintaining and supervising all safety precautions in connection to the work for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the worksite and other persons including, but not limited to, the general public who may be affected thereby. This paragraph shall not be construed to make the Service Provider responsible for the safety of the worksite once a construction contract has been awarded.

10. COMPENSATION - INVOICE AND PAYMENT FOR SERVICES

- 10.1 The City shall pay the Service Provider, subject to any authorized deductions, the applicable not to exceed lump sum prices set forth for each service authorized by the City, and actually delivered or performed, as the case may be, by the Service Provider to the satisfaction and acceptance, as appropriate, of the City. The timing of such payments shall be as set forth below in the Section.
- 10.2 The City shall pay the Service Provider the price as set forth within 30 days after completion of the services, or 30 days after the City's receipt of the invoice, whichever is later. The Contractor shall invoice the City for

the implementation services that were completed and accepted under the Contract, accompanied by such supporting documentation and other backup material as the City may reasonably require.

- 10.3 The Service Provider shall deliver to the City approval and acceptance, and before eligible for final payment of any amounts due, all documents and material prepared by the Service Provider for the City under this Contract.
- 10.4 The City shall pay the undisputed amount of the Service Provider's invoice, as it may be reduced to reflect unsubstantiated or unsatisfactory service. Items in dispute shall be paid upon the resolution of the dispute. No verification or payment of any amounts invoiced shall preclude the City from recovering any money paid in excess of that due under the terms of this Contract.
- 10.5 The Service Provider shall be obligated to pay promptly all proper charges and costs incurred by the Service Provider for labor and expenses incurred for the work performed hereunder. The City shall have the right, but not the obligation, to pay directly to third parties (including subcontractors) all past due amounts owed by the Service Provider to third parties for labor and materials used for the work hereunder, based on invoices submitted by such third party, and all such amounts paid by the City shall be applied toward, and shall reduce, amount owed to Service Provider hereunder.
- 10.6 The Service Provider shall submit all invoices City of Brookhaven Public Works Department electronically to pwadmin@Brookhavenga.gov and copy to City of Brookhaven, GA, Accounts Payable, 4362 Peachtree Road NE, Brookhaven, GA 30319.
- 10.7 The Service Provider will agree to comply with the City of Brookhaven's Financial Policies and Purchasing Policy, to the extent applicable.
- 10.8 The Service Provider agrees that the compensation provided herein shall be full and final settlement of all claims arising against Brookhaven for work done, materials furnished, costs incurred or otherwise arising out of this contract and shall release the City from any and all further claims related to the payment for services and materials furnished in connection with this Agreement.
- 10.9 The Service Provider and City agree that in any event a provision of this Contract pertaining to the time of payment, the rate of payment, and any rates of interest differs from any provision of the Prompt Pay Act, such provision of the Prompt Pay Act are hereby waived and said Contract provision shall control. The City shall not be responsible for any interest penalty or for any late payment.

11. COMPLIANCE WITH LAWS AND REGULATIONS

- 11.1 The Service Provider shall perform its obligations and functions hereunder in compliance with the applicable laws of the United States, the State of Georgia, DeKalb County, the City of Brookhaven, any applicable rules, regulations or directives of any agency thereof, and the applicable regulations of the City. OSHA rules and regulations shall be followed at all times. The City shall have the right (but not the obligation) to contest or challenge by any means whatsoever any law, regulation, rule or directive which in any way affects or otherwise impacts upon the Service Provider's performance of its obligations and functions hereunder; the Service Provider shall cooperate to the fullest extent and take whatever action (including becoming a party in any litigation) the City should reasonable request in connection with any such challenge or contest by the City.
- 11.2 The Service Provider shall obtain and keep current all licenses, permits and authorizations, whether municipal, county, state or federal, required for the performance of its obligations and functions hereunder and shall pay promptly when due all fees, therefore.
- 11.3 The Service Provider shall abide by all applicable state and federal regulations pertaining to wages and hours of employees; including but not limited to the Service Provider's compliance with requirements of O.C.G.A. 13-10-91 AND Rule 300-104-1-.02.

12. SERVICE PROVIDER'S LIABILITY

The Service Provider shall be responsible for the prompt payment of any fines imposed on the city or the Service Provider by any other federal, state or local governmental agency as a result of the Service Provider's, or its subcontractor's (or the officers' directors', employees' or agents' of either), failure to comply with the requirements of any law or any governmental agency rule, regulation, order or permit. The liability of the Service Provider under this Section 12 is in addition to and in no way a limitation upon any other liabilities and responsibilities which may be imposed by applicable law or by the indemnification provision of Section 13 hereof, and such liability shall survive the expiration or earlier termination of this Contract for the period of twelve (12) months.

13. INDEMNIFICATION AND INSURANCE

- 13.1 This section omitted.
- 13.2 In addition to indemnification provisions stated above, if the City's use of any service, software, firmware, programming, or other item provided by or on behalf of the Service Provider is enjoined due to infringement of another person or entity's intellectual property rights, the Service Provider shall promptly, at its sole cost and expense, modify the infringing item so that it no longer infringes, procure for the City the legal right to continue using the infringing item, or procure for the City a non-infringing item, or procure for the City a non-infringing replacement item having equal or greater functional capabilities as the infringing item.
- 13.3 To the fullest extent permitted by law, the Service Provider shall indemnify and hold harmless the City, and the City's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Service Provider or Service Provider's officers, directors, partners, employees, or Consultants.
- 13.4 No recourse under or upon any obligation, covenant or agreement contained in this Contract, or any other agreement or document pertaining to the work or services of the Service Provider hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or any judgment obtained against the City, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Contract, shall be had against any member (including without limitation members of the City's Council, or members of the citizens advisory committees of each), any officer, employee or agent, as such, past, present, or future of the City, either directly or through the City or otherwise for any claim arising out of or in connection with this Contract or the work or services conducted pursuant to it, or for any sum that may be due and unpaid by the City. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, officer, employee, or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of or in connection with this Contract or the work or services conducted pursuant to it, or for the payment for or to the City, or any receiver therefore or otherwise, or any sum that may remain due and unpaid by the City, is expressly waived and released as a condition of and in consideration of the execution of this Contract and the promises made to the Service Provider pursuant to this Contract.
- 13.5 In any and all claims against the City, or any of their officers, members, agents, servants or employees, by any employee of the Service Provider, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation of the Service Provider under this Section 13 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for the Service Provider or any subcontractor under Workers' Compensation Acts, disability benefit acts or other employee benefit acts.

13.6 No provisions of Section 13 herein shall be construed to negate, abridge, or otherwise reduce any other right of indemnity that the City may have as to any party or person described therein.

13.7 Insurance

13.7.1 General Liability and Automobile Liability. The Service Provider shall purchase and maintain in force during the term of the Contract, at its own cost and expense, to protect the Service Provider, the City, and the members (including, without limitation, all members of the governing City's Council and the citizens' advisory committees of each), officers agents, and employees of each, from and against any and all liabilities arising out of or in connection with the Service Provider's performance of the Contract work:

(1) Commercial general liability insurance with coverage of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence, and with contractual liability coverage for Service Provider's covenants to and indemnification of the City under the Contract, and

(2) Automobile liability insurance with policy limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per accident or occurrence covering each motor vehicle operated on City property.

13.7.1.1 Self-Insured Retention. Service Provider's commercial general liability insurance policies shall not be subject to a self-insured retention exceeding \$10,000, if the value of the Contract is less than \$1,000,000, and not be subject to a self-insured retention exceeding \$100,000 if the Contract is \$1,000,000 or more unless approved by the City Manager. Service Provider's automobile liability insurance policies shall not be subject to a self-insured retention exceeding \$10,000 unless approved by the City Manager.

13.7.1.2 Additional Insured Endorsement. Service Provider agrees and shall cause the City their member (including, without limitation, members of the City's Council and members of the citizens' advisory committees of each), officers, employees, and agents to be named as additional insured's under such policy or policies of commercial general and automobile liability insurance.

13.7.2 Workers' Compensation and Employer's Liability. If Service Provider has any employee working on City property, Service Provider shall procure and maintain in force during the term of the Contract (i) workers' compensation insurance, and (ii) employer's liability insurance. The policy limits of the Service Provider's employer's liability insurance shall not be less than \$100,000 for "each employee." If the Service Provider is self-insured, the Service Provider shall provide proof of self-insurance and authorization to self-insure as required by applicable state laws and regulations.

13.7.3 Professional Liability Insurance. The Service Provider shall purchase and maintain in force during the term of the Contract, Professional Liability insurance which will pay for damages arising out of errors or omissions in the rendering, or failure to render professional services under the Contract in the amount of at least ONE MILLION DOLLARS (\$1,000,000.00) per claim. Such insurance must contain nose and tail coverage to include work performed by the Service Provider from the project's inception date and until such time as the Statute of Limitations has run for the work done on the project.

13.7.4 Health Insurance. Not applicable.

13.7.5 Garage Liability Insurance. Not applicable.

- 13.7.6 Garage Keeper's Legal Liability Insurance. Not applicable.
- 13.7.7 Crime Coverage. Not applicable.
- 13.7.8 Pollution Liability Insurance. Not applicable.
- 13.7.9 Deductibles. The Service Provider's policies of insurance required by this Section 13.7 may require the Service Provider's payment of a deductible, provided the Service Provider's insurer is required to pay claims from the first dollar at 110% of the claim value without any requirement that the Service Provider pays the deductible prior to its insurer's payment of the claim.
- 13.7.10 Other Insurance Requirements. All insurance policies required by this Section 13.7 shall be provided that they are primary insurance with respect to any other valid insurance the City may possess and that any other insurance the City does possess shall be considered excess insurance only. All such insurance shall be carried with a company or companies which meet the requirements of Section 14.2 of these General Conditions and said policies shall be in a form satisfactory to the City. A properly completed and executed Certificate of Insurance on a form provided or approved by the City (such as a current ACORD certificate of insurance) evidencing the insurance coverage required by this Section shall be furnished to the City upon the Service Provider shall provide the City with at least thirty (30) days' prior written notice of any adverse material change in the Service Provider's required insurance coverage except that ten (10) days' notice of cancellation for non-payment is required. For purposes of this Section 13.7.10, and "adverse material change" shall mean any reduction in the limits of the insurer's liability, any reduction, non-renewal or cancellation of any insurance coverage, or any increase in the Service Provider's self-insured retention. Prior to the expiration of any such policy, the Service Provider shall file with the City a certificate of insurance showing that such insurance coverage has been renewed. If the insurance coverage is canceled or reduced, the Service Provider shall, within five (5) days after such cancellation or reduction in coverage, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies approved by the City. If the Service Provider fails to obtain or have such insurance reinstated, the City may, if it so elects, and without waiving any other remedy it may have against the Service Provider, immediately terminate this Contract upon written notice to the Service Provider. The City Manager shall have the right to alter the monetary limits or coverage herein specified from time to time during the term of this Contract, and the Service Provider shall comply with all reasonable requests of the City Manager with respect thereto.

14. LIABILITY INSURANCE

- 14.1 This section omitted.
- 14.2 Liability Insurance Companies furnishing insurance coverage required by these General Conditions shall (a) be approved to issue insurance policies in the State of Georgia, and (b) must have no less than a "B+" Financial Rating and a Financial Size Category of "Class VI" or higher according to the most current edition of A.M. Best's Insurance Reports. If the liability insurer is rated by A.M. Best's Insurance Reports at an "A- Financial Rating and a Financial Size Category of "Class VIII" or higher than the City Manager may waive the requirement for the insurer to be approved by the State of Georgia.

15. CONTRACT ADJUSTMENTS

- 15.1 Notwithstanding any provision herein to the contrary, the City reserves the right to modify at any time the nature, method, scope, frequency, or timing of the Service Provider's obligations under this Contract (Contract Adjustments) in whatever manner it determines to be reasonably necessary for the proper completion of the Service Provider's work hereunder. Both parties agree that, should any Contract Adjustments be made, the Service Provider's compensation will be adjusted accordingly, in such amount or amounts as will be mutually agreed to by means of good-faith negotiation by the City and Service Provider and, to the extent possible, by reference to any unit costs already established in the Proposal. Without exception, all deletion or additions to the scope of work will be set forth in a written Amendment to this Contract.
- 15.2 Notwithstanding the foregoing, the City shall have the right to terminate this Contract herein should the Service Provider and the City fail to reach agreement on the adjusted compensation within thirty (30) days after the date of the Contract Adjustment.
- 15.3 Notwithstanding the foregoing, there shall be no upward adjustment of the compensation on account of any Contract Adjustment made necessary or appropriate as a result of the mismanagement, improper act, or other failure of the Service Provider, its employees, agents, or its subcontractors to properly perform its obligations and functions under this Contract.

16. SUBCONTRACTORS

- 16.1 The Service Provider shall perform all of its obligations and functions under this Contract by means of its own employees, or by a duly qualified subcontractor which is approved in advance by the City. Such subcontractor which is an affiliate, parent, or subsidiary company; or had principal owners, relative, management, or employees common to the Service Provider; or any other party that has the ability to significantly influence the management or daily business operations of the subcontractor must be disclosed in writing to the City Manager. Goods and services provided by subcontractors which are reimbursed by the City must be bona fide arm's-lengths transactions. In the event a subcontractor is employed, the Service Provider shall continuously monitor the subcontractor's performance, shall remain fully responsible to ensure that the subcontractor performs as required and itself performs or remedy any obligations or functions which the subcontractor fails to perform properly. Nothing contained herein shall be construed to prevent the Service Provider from using the services of a common carrier for delivering goods to the City. The City approves the sub-Service Providers listed in the Statement of Qualifications.
- 16.2 This Contract shall be referred to and incorporated within any contractual arrangement between the Service Provider and a subcontractor and, in such contractual arrangement; the subcontractor shall give its express written consent to the provisions of this Section 16. To the extent feasible, the provisions of this Contract shall apply to any such subcontractor in the same manner as they apply to the Service Provider. However, such application shall neither make any subcontractor a party to this Contract nor make such subcontractor a third-party beneficiary hereof.
- 16.3 In the event that the Service Provider employs a subcontractor, then the City may require that copies of invoices for all work (including invoices submitted to the Service Provider for work performed by a subcontractor) shall be submitted to the City by the Service Provider and the City shall pay all compensation to the Service Provider. It shall be the sole responsibility of the Service Provider to deal with a subcontractor with respect to the collection and submission of invoices and the payment of compensation. In no event shall the City have any obligation or liability hereunder to any subcontractor, including, in particular, any obligations of payment.

17. DEFAULT AND TERMINATION

17.1 In the event that:

- 17.1.1 the Service Provider shall fail to keep, perform or observe any of the promises, covenants or agreements set forth in this Contract (provided that notice of the first failure shall have been given to the Service Provider, but whether or not the Service Provider shall have remedied any such failure); or
- 17.1.2 the Service Provider shall fail to keep, perform or observe any promise, covenant, or agreement set forth in this Contract, and such failure shall continue for a period of more than five (5) days after delivery to the Service Provider of a written notice of such breach or default; or
- 17.1.3 the Service Provider's occupational or business license shall terminate or the Service Provider shall fail to provide the City with any bond, letter of credit, or evidence of insurance as required by the Contract Documents, for any reason; or
- 17.1.4 the Service Provider fails for any reason to provide the City with an acceptable renewal or replacement bond or letter of credit within the time period specified by a provision of this Contract; or
- 17.1.5 the Service Provider shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the Federal Bankruptcy laws, or under any other law or statute of the United States or any State thereof, or shall consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
- 17.1.6 the Service Provider shall have a petition under any part of the Federal Bankruptcy laws, or an action under any present or future insolvency laws or statute filed against it, which petition is not dismissed within thirty (30) days after the filing thereof; or
- 17.1.7 there is any assignment by the Service Provider of this Contract or any of the Service Provider's rights and obligations hereunder for which the City has not consented in writing; or
- 17.1.8 the Service Provider shall default on any other agreement entered into by and between Service Provider and the City, then, in its discretion, the City shall have the right to terminate this Contract for default, which termination shall be effective upon delivery of written notice of such termination to the Service Provider. In the event that the City terminates this Contract for default, or the Service Provider abandons or wrongfully terminates the Contract, the Service Provider shall be paid for compensation earned to the date of termination or abandonment (but the City shall have the right to reduce by off-set any amounts owed to the Service Provider hereunder or under any other Contract or obligation by the amount of the City's damages and any amounts owed by the Service Provider to the City), but the Service Provider shall not be compensated for any profits earned or claimed after the receipt of the City's notice of termination by default or after abandonment or wrongful termination. The City's election to terminate or not to terminate this Contract in part or whole for the Service Provider's default shall in no way be construed to limit the City's right to pursue and exercise any other right or remedy available to it pursuant to the terms of the Contract or otherwise provided by law or equity.

17.2 Notwithstanding anything else herein contained, the City may terminate this Contract in whole or in part at any time for its convenience by giving the Service Provider thirty (30) days written notice. In that event, the Service

Provider shall proceed to complete any part of the work, as directed by the City, and shall settle all its claims and obligations under the Contract, as directed by the City. The Service Provider shall be compensated by the City in accordance with the provisions hereof, including in particular Section 2 of these General Conditions, provided, however, that in no event shall Service Provider be entitled to compensation for work not performed or for anticipatory profits. Service Provider shall justify its claims, as requested by the City, with accurate records and data.

17.3 Bankruptcy and Liquidation - In the event the Service Provider (1) makes an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for all or a substantial part of its assets; (2) commences any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction whether now or hereafter in effect; (3) has had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made, and which remains undismissed for a period of sixty (60) days or more; (4) takes any corporate action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or substantial part of its assets; or (5) permits any such custodianship, receivership, or trusteeship to continue undischarged for a period of sixty (60) days or more causing the Service Provider or any third party, including, without limitation, a trustee in bankruptcy, to be empowered under state or federal law to reject this Contract or any agreement supplementary hereto, the City shall have the following rights:

(i) In the event of a rejection of this Contract or any agreement supplementary hereto, the City shall be permitted to retain and use any back-up or archival copies of the software licensed hereunder under this Agreement for the purpose of enabling it to mitigate damages caused to the City because of the rejection of this Contract. The City shall exert reasonable efforts to mitigate such damages by use of such back-up or archival copies.

(ii) In the event of rejection of this Contract or any agreement supplementary hereto, the City may elect to retain its rights under this Contract or any agreement supplementary hereto as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the City to, as applicable, the Service Provider or the bankruptcy trustee or receiver. The Service Provider or such bankruptcy trustee or receiver shall not interfere with the rights of the City as licensee as provided in this Contract or in any agreement supplementary hereto to obtain the Source Material(s) from the bankruptcy trustee and shall, if requested, cause a copy of such Source Material(s) to be available to the City.

(iii) In the event of rejection of this Contract or any agreement supplementary hereto, the City may elect to retain its rights under this Contract or any agreement supplementary hereto as provided in section 365(n) of the Bankruptcy Code without prejudice to any of its rights of setoff with respect to this Contract under the Bankruptcy Code or applicable non-bankruptcy law; or In the event of a rejection of this Contract or any agreement supplementary hereto, the City may retain its rights under this Contract or any agreement supplementary hereto as provided in section 365(n) of the Bankruptcy Code without prejudice to any of its rights under section 503(b) of the Bankruptcy Code.

17.4 Service Provider may terminate this agreement upon 30 days prior written notice in the event of a material breach of the terms of this subcontract by the City.

17.5 Notwithstanding the foregoing, Service Provider shall not be held liable for the accuracy or reliability of any partially completed work delivered in accordance with early termination.

18. CITY'S AUTHORIZED REPRESENTATIVE

During the term of this Contract, the City Manager or designee may from time to time designate an individual to serve as the City's Authorized Representative (CAR) and an Assistant CAR designated to serve in that capacity in the absence of the CAR, who shall have such authority to act on the City's behalf as the City Manager may from

time to time actually delegate to such person, but in no event shall the CAR have authority to modify or terminate this Contract, or make final decisions with respect to amendments, time extensions, assignments, cost or payment adjustments or payment disputes.

19. ASSIGNMENT

Neither this Contract nor any of the Service Provider's rights or obligations hereunder may be assigned by the Service Provider without the City's prior written consent, which consent may be granted or withheld at the City's sole discretion. Any transfer of this Contract by merger, consolidation or liquidation (unless the stock of the Service Provider is traded on a national stock exchange or in a generally recognized over the counter securities market) any change in ownership of or power to vote a majority of the outstanding voting stock or ownership interests of the Service Provider shall constitute an assignment of this Contract for purposes of this Section. In the event the Service Provider assigns or subcontracts or attempts to assign or subcontract any right or obligation arising under this Contract without the City's prior written consent, the City shall be entitled to terminate this Contract pursuant to the provisions of Section 17 hereof.

20. NOTICES

20.1 Unless otherwise stated herein, all notices or other writings which the City is required or permitted to give to the Contractor may be hand delivered, mailed via U.S. Certified Mail or sent next-day delivery by a nationally-recognized overnight delivery service to the Contractor's address set forth in the Proposal. Any such notice shall be deemed to have been delivered upon actual delivery, or one (1) day following submission to a nationally-recognized overnight delivery service for next day delivery to the Contractor, or three (3) days following submission to the Contractor by U.S. Certified Mail.

20.2 Unless otherwise stated herein, all notices or other writings which the Contractor is required or permitted to give to the City may be hand delivered to the City Manager, mailed via U.S. Certified Mail, or sent next-day delivery by a nationally-recognized overnight delivery service. Any such notice shall be deemed to have been delivered upon actual delivery, or one (1) day following submission to a nationally-recognized overnight delivery service for next day delivery to City, or three (3) days following submission to the City by U.S. Certified Mail. Any such notice shall be sent to:

City of Brookhaven, GA
ATTN: City Manager
4362 Peachtree Road
Brookhaven, GA 30319

Consultant: Heath & Lineback Engineers, Inc.
ATTN:
2390 Canton Road, Bldg. 200
Marietta, GA 30066

20.3 Either party may change its notice address by written notice to the other given as provided in this section.

21. NONDISCRIMINATION

21.1 During the performance of this Contract, the Service Provider, for itself, its assignees and successors in interest agrees as follows:

21.1.1 Compliance with Regulations. The Service Provider shall comply with the Laws and Regulations as they may be amended from time to time (hereafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Contract.

21.1.2 Nondiscrimination. The Service Provider, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of any subcontractor, including procurement of materials and leases of equipment. The Service Provider shall not participate either directly or indirectly in the discrimination prohibited by the Regulations.

- 21.1.3 Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive proposing or negotiation made by the Service Provider for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Service Provider of the Service Provider's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
- 21.1.4 Information and Reports. The Service Provider shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources or information, and its facilities as may be determined by the City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Service Provider is in the exclusive possession of another who fails or refuses to furnish this information, the Service Provider shall so certify to the City, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 21.1.5 Sanctions for Noncompliance. In the event of the Service Provider's noncompliance with the nondiscrimination provisions of this Contract, the City shall impose such Contract Sanctions as it may determine to be appropriate, including but not limited to:
 - 21.1.5.1 Withholding of payments to the Service Provider under the Contract until the Service Provider complies, and/or
 - 21.1.5.2 Cancellation, termination or suspension of the Contract, in whole or in part.
- 21.1.6 Incorporation of Provisions. The Service Provider shall include the provisions of subsections 21.1.1 through 21.1.5 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Service Provider shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Service Provider becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Service Provider may request the City to enter into such litigation to protect the interest of the City and, in addition, the Service Provider may request the United States to enter into such litigation to protect the interests of the United States.
- 21.2 The Service Provider assures the City that it will comply with the pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, marital status, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision shall bind the Service Provider from the period beginning with the initial solicitation through the completion of the Contract.

22. COPYING DOCUMENTS

The Service Provider hereby grants the City and its agent's permission to copy and distribute any and all materials and documents contained in, comprising, or which are otherwise submitted to the City with or in connection with the Service Provider's Proposal or which are contained in the Contract Documents (the "Submittals"). The permission granted by the Service Provider shall be on behalf of the Service Provider and any and all other parties who claim any rights to any of the materials or documents comprising the Submittals. Such permission specifically authorizes the City and its agents to make and distribute such copies of the Submittals or portions thereof as may be deemed necessary or appropriate by the City for its own internal purposes or for responding to requests for copies from any member of the public regardless of whether the request is specifically characterized as a public records request pursuant to Georgia Code. This provision shall survive the expiration or termination of the Contract.

23. GENERAL PROVISIONS

- 23.1 The Contract Documents consist of the Contract, the Proposal Forms, the Instructions to Proposers, Request for Proposals, all Addendum(s) issued prior to execution of this Contract, these General Conditions and the Request for best and final offer. Together, these documents comprise the Contract and all the documents are fully a part of the Contract as if attached to the Contract or repeated herein. Precedence of the Contract Documents shall be as follows: (i) addendum(s) to the Contract Documents, (ii) the Contract, (iii) the General Conditions, (iv) the Fees/Rate, (v) the Proposal Forms, and (vi) the Request.
- 23.2 This Contract represents the entire agreement between the parties in relation to the subject matter hereof and supersedes all prior agreements and understandings between such parties relating to such subject matter, and there are no contemporaneous written or oral agreements, terms or representations made by any party other than those contained herein. No verbal or written representations shall be relied upon outside the Contract terms and amendments. Without exception, all deletions or additions to the scope of work will be set forth in a written amendment to this Contract. No amendment, modification, or waiver of this Contract, or any part thereof, shall be valid or effective unless in writing signed by both parties; and no waiver of any breach or condition of this Contract shall be deemed to be a waiver of any other subsequent breach or condition, whether of a like or different nature.
- 23.3 The Service Provider shall, during the term of this Contract, repair any damage caused to real or personal property of the City and/or its tenants, wherever situated, caused by the intentional, reckless, or negligent acts or omissions of the Service Provider's officers, agents, or employees, and any subcontractors and their officers, agents, or employees, or, at the option of the City, the Service Provider shall reimburse the City for the cost of repairs thereto and replacement thereof accomplished by or on behalf of the City.
- 23.4 The Service Provider warrants to the City that no work performed or materials purchased pursuant to the Contract, whether by, from, or through the Service Provider or a subcontractor, shall cause any claim, lien or encumbrance to be made against any property of the City, provided Service Provider has received proper payment for any such materials or services giving rise to the claim, and the Service Provider shall indemnify and save the City harmless from and against any and all losses, damages and costs, including reasonable attorneys' fees, with respect thereto. If any such claim, lien or encumbrance shall be filed, the Service Provider shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. This provision shall survive the expiration or termination of the Contract.
- 23.5 The language of this Contract shall be construed according to its fair meaning, and not strictly for or against either the City or the Service Provider. This Contract shall be deemed to be made, construed and performed according to the laws of the State of Georgia. Any suit or proceeding initiated for the purpose of interpreting or enforcing any provision of this Contract or any matter in connection therewith shall be brought exclusively in a court of competent jurisdiction in DeKalb County, Georgia, and the Service Provider waives any venue objection, including, but not limited to, any objection that a suit has been brought in an inconvenient forum. The Service Provider agrees to submit to the jurisdiction of the Georgia courts and irrevocably agrees to acknowledge service of process when requested by the City
- 23.6 The section headings herein are for the convenience of the City and the Service Provider, and are not to be used to construe the intent of this Contract or any part hereof, or to modify, amplify, or aid in the interpretation or construction of any of the provisions hereof.
- 23.7 The use of any gender herein shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.

- 23.8 The delay or failure of the City at any time to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of that breach or any subsequent breach or default in the terms, conditions, or covenants of this Contract. The Service Provider shall not be relieved of any obligation hereunder on account of its failure to perform by reason of any strike, lockout, or other labor disturbance of the Service Provider.
- 23.9 In any litigation commenced between the Service Provider, the City, and/or a third party arising out of the Service Provider's operations and activities at the premises or in any action to enforce the terms of this Contract, then the non-prevailing party shall pay all costs and reasonable attorney's fees and other court or legal costs incurred by or imposed upon the prevailing party in connection with such litigation for all trial and appellate proceedings in proportion equal to the percentage liability of the non-prevailing party as ultimately adjudicated using principles of comparative fault. The parties shall give prompt notice to the other party of any claim or suit instituted against it by such third party. The provisions of this Section shall survive the acceptance of the services and payment therefore, and the expiration or earlier termination of this Contract.
- 23.10 The City shall have the right to recover from the Service Provider all of the City's direct costs and expenses incurred in enforcing the provisions of this Contract including, but not limited to, (1) the cost of administrative investigation and enforcement (including, without limitation, audit fees and costs, reasonable attorneys' fees) and (2) the cost of any trial, appellate or bankruptcy proceeding (including, without limitation, investigation costs, audit fees and costs, reasonable attorneys' fees, court costs, paralegal fees and expert witness fees), subject to the terms of Article 23.9. This provision shall survive the expiration or termination of the Contract.
- 23.11 The Service Provider shall not during the term of the Contract knowingly hire or employ (on either a full-time or part-time basis) any current employee of the City.
- 23.12 The Service Provider shall be required, during the term of the Contract, at no additional cost to the City, to take such reasonable security precautions with respect to its operations at City Hall as the City in its discretion may from time to time prescribe. The Service Provider shall comply with all regulations, rules and policies of any governmental authority, including the City, relating to security issues.
- 23.13 The City may, but shall not be obligated to, cure, at any time, upon five (5) days written notice to the Service Provider (provided, however, that in any emergency situation the City shall be required to give only such notice as is reasonable in light of all the circumstances), any default by the Service Provider under this Contract; whenever the City so cures a default by the Service Provider, all direct costs and expenses incurred by the City in curing the default, including, but not limited to, reasonable attorneys' fees, shall be paid by the Service Provider to the City on demand.
- 23.14 In the event that additional work beyond the scope of this Contract is requested by the City Manager and it results in any extra charges to the City, the Service Provider shall so advise the City in writing of the amount of the extra charges. The City is not required to pay any extra charges for additional work unless such work and the charges therefore have been approved in advance and have been confirmed in writing within twenty-four (24) hours by the City Manager, in his or her exclusive discretion.
- 23.15 The Service Provider is an independent Contractor and nothing contained herein shall be construed as making the Service Provider an employee, agent, partner or legal representative of the City for any purpose whatsoever. The Service Provider acknowledges that it does not have any authority to incur any obligations or responsibilities on behalf of the City, and agrees not to hold itself out as having any such authority. Nothing contained in this Contract shall be construed to create a joint employer relationship between the City and the Service Provider with respect to any employee of the Service Provider or of its subcontractors.
- 23.16 The Service Provider and its subcontractors, if any, shall maintain complete and accurate books and records in accordance with generally accepted accounting principles, consistently applied, and shall be in a form

reasonably acceptable to the City Manager or designee. The Service Provider and its subcontractors shall account for all expenses of any nature related to transactions in connection with this Contract in a manner which segregates in detail those transactions from other transactions of the Service Provider and subcontractors and which support the amounts reported and/or invoiced to the City. At a minimum, the Service Provider's and subcontractor's accounting for such expenses and transactions shall include such records in the form of electronic media compatible with or convertible to a format compatible with computers utilized by the City at its offices; a computer run hard copy; or legible microfilm or microfiche, together with access to the applicable reader. All such books and records and computerized accounting systems, shall upon reasonable notice from the City be made available in DeKalb County, Georgia, for inspection, examination, audit and copying by the City through and by its duly authorized representatives at any time for up to four (4) years after the year to which books and records pertain. Such inspection, examination, or audit may include, but is not limited to a review of the general input, processing, and output controls of information systems, using read only access, for all computerized applications used to record financial transactions and information. The Service Provider and subcontractor shall freely lend its own assistance in a timely manner in making such inspection, examination, audit, or copying and, if such records are maintained in electronic and other machine readable format, shall provide the City and/or its representative such assistance as may be required to allow complete access to such records. The City Manager may require the Service Provider and subcontractors to provide other records the City Manager, in his or her sole discretion, deems necessary to enable the City to perform an accurate inspection, examination or audit of expenses incurred in and transactions related to performance of this Contract. Such records shall be provided within thirty (30) days of request thereof. In the event that expenses incurred or reimbursed are found by such inspection, examination, or audit to have been overpaid, the Service Provider and its subcontractors agree that such amounts shall be payable to the City. If, prior to the expiration of the above-stated four (4) year record retention period, any audit or investigation is commenced by the City, or any claim is made or litigation commenced relating to this Contract by the City, the Service Provider, or a third party, the Service Provider shall continue to maintain all such records, and the City shall continue to have the right to inspect such records in the manner stated above, until the inspection, examination, audit, claim, or litigation is finally resolved (including the determination of any and all appeals or the expiration of time for an appeal). This provision shall survive the expiration or earlier termination of this Contract. In the event of any conflict between any provision of this Contract and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Contract shall control even where this Contract references such provisions or standards. In particular, without limitation, the Service Provider and subcontractors shall maintain all records required under this Contract to the full extent required hereunder, even if some or all such records would not be required under such generally accepted accounting principles or auditing standards. If as a result of an inspection, examination or audit, it is established that amounts are due from the Service Provider to the City, the Service Provider shall forthwith, upon written demand from the City, pay the City such amount, together with interest on the amount the maximum rate of interest allowed by law, from the date such additional amounts were overpaid by the City. Further if such inspection, examination or audit establishes that the Service Provider has over billed such amounts for any Contract period by two (2%) percent or more, then the entire expense of such inspection, examination or audit shall be paid by the Service Provider.

- 23.17 The Service Provider and subcontractors shall prepare and provide the City with all detailed reports as required under the Contract on a timely basis. The City reserves the right to modify the reporting procedures or the form and content of any report as it deems necessary.
- 23.18 There are no third party beneficiaries to this Contract and nothing contained herein shall be construed to create such.
- 23.19 Time is of the essence for the performance of each of the Service Provider's obligations under this Contract.
- 23.20 In computing any period of time established under this Contract, except as otherwise specified herein the word "days," when referring to a period of time that is ten (10) days or less means business days, and when referring to a period of time that is more than ten (10) days means calendar days. The day of the event, from which the

designated period of time begins to run shall not be included. A business day is any day other than Saturday, Sunday, or Federal, State of Georgia or City holidays.

- 23.21 The Service Provider agrees to perform all acts, consistent with the applicable standard of care, and execute all supplementary instruments or documents which may be reasonably necessary to carry out or complete the transaction(s) contemplated by this Contract.
- 23.22 The City reserves the right to further develop, improve, repair and alter the facilities and all roadways, and parking areas, as it may reasonably see fit, free from any and all liability to the Service Provider for loss of business or damages of any nature whatsoever to the Service Provider occasioned during the making of such improvements, repairs, alterations and additions, including, but not limited to, any damages resulting from negligence of the City or its employees, agents or Service Providers. Any modification to the Service Provider's work product or unintended use of same shall be at the sole risk of the City and without liability or legal exposure to Service Provider or its subconsultants.
- 23.23 The Service Provider and the City hereby mutually waive any claim against each other and their respective members, officials, officers, agents and employees for damages (including damages for loss of anticipated profits) caused by any suit or proceedings brought by either of them or by any third party directly or indirectly attacking the validity of this Contract or any part thereof, or any addendum or amendment hereto, or the manner in which this Contract was solicited, awarded or negotiated, or arising out of any judgment or award in any suit or proceeding declaring this Contract, or any addendum or amendment hereto, null, void or voidable or delaying the same, or any part thereof, from being carried out.
- 23.24 At the option of the Service Provider, the products and/or services provided under the Contract resulting from this solicitation may be provided to other governmental agencies, including the State of Georgia, its agencies, political subdivisions, counties and cities under the same terms and conditions, including price, as such products and/or services are provided under this Contract. Each governmental agency allowed by the Service Provider to purchase products and/or services in connection with this Contract shall do so independent of the City or any other governmental entity. Each agency shall be responsible for its own purchases and shall be liable only for goods and services ordered, received and accepted by it. The City shall have no liability to the Service Provider or any governmental agency resulting from the purchase by that agency of products and/or services from the Service Provider in connection with this Contract.

24. GRATUITIES, REBATES, OR KICKBACKS.

- 24.1 **GRATUITIES.** It shall be unethical for any person to offer, give or agree to give any employee or official of the City or for any employee or official of the City to solicit, demand, accept from another person, a gratuity, rebate, loan, offer of employment or other services or property of value in connection with any decision, approval, disapproval, recommendation or preparation of any part of a program requirement or a purchase request, including the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any particular matter, pertaining to any program requirement or a Contract or subcontract, or to any solicitation or proposal therefore in any manner inconsistent with the State of Georgia's Department of Administrative Services Gratuity Policy. Rebates normally or routinely offered to customers in the ordinary course of business for the purchase of goods and services are acceptable and are the property of the City.
- 24.2 **KICKBACK AND REBATES.** It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor to this Contract to the prime contractor or higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontractor or order.

End of Exhibit A.

EXHIBIT B

FEES/RATE

Phase	Phase Description	Total Fee
	Totals	\$ 585,898.92
1	Data Collection and Survey Services	\$ 56,616.52
2	Geotechnical Investigation	\$ 113,098.26
3	Trail Alignment and Preliminary Design	\$ 341,587.38
4	Brookhaven/GDOT Coordination Meetings	\$ 13,562.25
5	Permitting	\$ 21,943.77
6	Final Design Development & Project Management	\$ 39,090.74

End of Exhibit B.

EXHIBIT C

SCOPE OF SERVICES

The Service Provider shall perform the scope of work described below. The Service Provider shall provide qualified and entered technical and professional personnel to duties and responsibilities assigned to perform to the City and Georgia DOT Standards.

Detailed Line by Line Scope of Work by Phase:

1. Data Collection and Survey Services

- a. Property lines, rights-of-way, streets, sidewalks, and intersections
- b. Topography
- c. Trees (species and caliper per City of Brookhaven Land Development Ordinance)
- d. Above ground utilities, bridge locations, and deck elevations
- e. Sanitary/storm sewers, manholes/catch basins/drop inlets/curb inlets (size, material, and invert information)
- f. FEMA floodplain
- g. Complete survey database per GDOT survey specifications
- h. Geotechnical Investigation
 - Bridge Foundation Investigation (LRFD) –1 Structure (Bridge #1)

2. Trail Alignment and Preliminary Design per GDOT PDP

- a. GDOT Concept Report
- b. Preliminary Trail Plans for GDOT PFPR including:
 - Plan, profile, cross sections or grading plan
 - Trail and site hydrology & hydraulics, design and details
 - Utility plans and coordination
 - Signing and marking plans
 - Erosion control and monitoring plans
 - Landscape and hardscape plans
 - Lighting plans
 - Retaining wall layouts – 8 standard type
 - Bridge plan and elevation layouts Bridge # 1
 - Preliminary cost estimates (construction, right-of-way, and utilities)
 - Prepare Post Construction Stormwater Report (MS4) per GDOT
 - Prepare draft special provisions
 - Prepare for, attend, and respond to GDOT PFPR, including City comments
- c. Right-of-way plans, including:
 - Right-of-way plans, approved by GDOT (10 parcels)
 - Right-of-way revisions (4 parcels)
 - Right-of-way staking
- d. Final Trail Plans for GDOT FFPR including:
 - Plan, profile, cross sections or grading plan
 - Trail and site hydrology & hydraulics, design and details
 - Utility plans and coordination
 - Signing and marking plans
 - Erosion control and monitoring plans

- Landscape and hardscape plans
 - Lighting plans
 - Incorporation of PCG Phase I design standards into final design
 - Retaining wall details – 8 standard
 - Final bridge foundation design and details for 1 prefabricated contractor design bridges, Bridge #1
 - Final cost estimates (construction, right-of-way, and utilities)
 - Prepare final special provisions
 - Prepare for, attend, and respond to GDOT FFPR, including City comments
- e. Environmental Studies and Documentation
- Early Coordination Letters
 - Air Assessment
 - Noise Type III
 - Archaeology Management Summary and Report
 - History Survey Report
 - Cultural Resources Assessment of Effects
 - Ecology Combined Survey and Effects Report
 - Prepare for and attend A3M
 - Prepare for and attend PIOH
 - NEPA Categorical Exclusion (CE)
 - Prepare for and attend PFPR and FFPR

3. Brookhaven/GDOT Coordination and Meetings

- a. City review meetings (3 total - concept, preliminary, and final plan milestones)
- b. Public Information Open House (PIOH), 1 meeting
- c. Monthly invoicing
- d. Attendance of pre-bid and pre-construction meetings (2 total), and assist City with responses to questions received prior to construction

4. Permitting

- a. Land disturbance and erosion control permit from the City
- b. GDOT encroachment permit (Buford Hwy)
- c. Section 404 Nationwide Permit
- d. Stream Buffer Variance

5. Final Design Development & Project Management

- a. Project Management and coordination over the duration of the contract including GDOT monthly status meetings and reports, GDOT P6 schedule updated, GDOT yearly cost estimate updates, and support for ARC funding requests.
- b. Prepare Submittal to GDOT for Corrected FFPR Plans
- c. Prepare, submit, and respond to GDOT 18 Week Plan Submittal
- d. Prepare, submit, and respond to GDOT Final Construction Plans, Specifications & Cost Estimate for Construction, Right-of-way, Utility and Environmental Certifications

Deliverables include the following:

1. GDOT Approved Concept Report
2. Survey database (no approval by GDOT)
3. FHWA Approved Environmental Categorical Exclusion
4. Public Meeting Layouts, Documents, Comments & Responses
5. GDOT Approved MS4 Report
6. GDOT Approved Bridge Layout (1)
7. GDOT Approved PFPR Report & Responses
8. GDOT Approved Bridge Foundation Investigation (1)
9. GDOT Approved Final Bridge Design Plans
10. GDOT Approved FFPR Report & Responses
11. GDOT Approved Final Construction Plans, Specifications, & Cost Estimates for Certifications and Local Letting

End of Exhibit C.

EXHIBIT D

TIMELINE

Baseline Schedule to be approved by Georgia DOT

End of Exhibit D.

EXHIBIT E

GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT

Contractor(s) Name: Heath & Lineback Engineers, Inc.

Address: 2390 Canton Road, Building 200, Marietta, GA 30066


By executing this affidavit, the undersigned person or entity verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is registered with, is authorized to participate in, and is participating in the federal work authorization program commonly known as E-Verify,* in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91.

The undersigned person or entity further agrees that it will continue to use the federal work authorization program throughout the contract period, and it will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the undersigned with the information required by O.C.G.A. § 13-10-91(b).

The undersigned person or entity further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Brookhaven within five (5) business days after any subcontractor(s) is/are retained to perform such service.

1404206
E Verify™ Company Identification Number


05/06/2019
Date of Authorization


BY: Authorized Officer or Agent
John A. Heath

06/30/2020
Date

SUBSCRIBED AND SWORN BEFORE
ME ON THIS THE

30th DAY OF June, 2020



Notary Public



[NOTARY SEAL]

Notary Public, Cherokee County, Georgia
My Commission Expires July 26, 2023

My Commission Expires: _____

* **or any subsequent replacement** operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

End of Exhibit E.

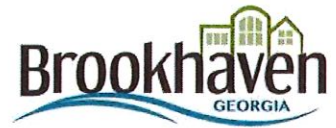


EXHIBIT F

DRUG FREE WORKPLACE

The undersigned certifies that the provisions of Code Sections 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the "Drug-free Workplace Act", have been complied with in full. The undersigned further certifies that:

- (1) A drug-free workplace will be provided for the Contractor's employees during the performance of the Contract; and
(2) Each Contractor who hires a Subcontractor to work in a drug-free workplace shall secure from that Subcontractor the following written certification:

"As part of the subcontracting agreement with City of Brookhaven (Contractor), Heath & Lineback Engineers, Inc. (Subcontractor) certifies to the Contractor that a drug free workplace will be provided for the Subcontractor's employees during the performance of this Contract pursuant to paragraph (7) of subsection (b) of Code Section 50-24-03."

Also, the undersigned further certifies that he will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

Company Name

Heath & Lineback Engineers, Inc.

John A. Heath 06/30/2020

BY: Authorized Officer or Agent Date

President
Title of Authorized Officer or Agent of Contractor

John A. Heath
Printed Name of Authorized Officer or Agent

June 30, 2020
Date

End of Exhibit F.

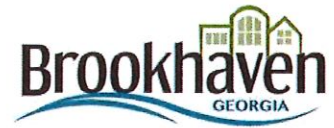


EXHIBIT G

Purchasing Policy Addendum

I, John A. Heath, hereby certify that I have received a copy of the City of Brookhaven, GA, Financial Management Policies Purchasing Policy which can be found at <http://brookhavenga.gov/city-departments/purchasing> and agree to comply with all requirements of the City of Brookhaven, GA Financial Management Policies Purchasing Policy to the extent the policy is applicable to the undersigned.

A handwritten signature in blue ink that reads "John A. Heath".

06/30/2020

BY: Authorized Officer or Agent Date
(Service Provider Signature)

President

Title of Authorized Officer or Agent of Service Provider

John A. Heath

06/30/2020

Printed Name of Authorized Officer or Agent Date

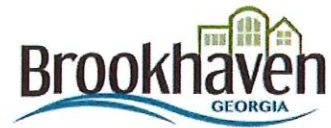
End of Exhibit G.

EXHIBIT H

NOTICE TO CONTRACTORS COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1. **Compliance with Regulations:** The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of the Contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it afterward and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, or national origin in the selection and retention of subcontracts including procurements of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when contract covers a program set forth in Appendix B of the Regulations. In addition, the Contractor will not participate either directly or indirectly in discrimination prohibited by 23 CFR 710.405 (b).
3. **Solicitations for subcontracts, including procurements of materials and equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, national origin or sex.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the Department of Transportation shall impose such Contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - (a) Withholding of payments to the Contractors under the Contract until the Contractor complies, and/or
 - (b) Cancellation, termination or suspension of the Contract, in whole or in part.



6. Incorporation of Provisions: The Contractor will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders or instruction issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as result of such direction, the Contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

End of Exhibit H.



REF: PI No. 0016053 Peachtree Creek Greenway Trail from Atlanta to North Druid Hill Road – Phase II

Detailed Line by Line Scope of Work by Phase – Supplemental Agreement #1 – July 21, 2022

1. Trail Alignment and Preliminary Design per GDOT PDP
 - a. Water fountain design and water line service plans and permitting.
 - b. Preliminary layouts and design of six (6) bridges/boardwalks totaling approximately 2,740 feet long.
 - c. Phase I ESA Report.
 - d. Phase II ESA Report.
 - e. Detail ROW estimate by approved GDOT vendor.
 - f. Arborist report for existing trees within project corridor.

2. Final Design Development & Project Management
 - a. Final design and details of six (6) bridges/boardwalks totaling approximately 2,740 feet long.
 - b. Six (6) Bridge Foundation Investigations (BFIs) totaling approximately 2,740 feet long.
 - c. NEPA Categorical Exclusion Re-evaluation
 - d. Construction Services including:
 - Attend pre-bid and pre-construction meetings (2 total)
 - Perform bidding services including answering requests for information (RFIs) and performing bid analysis and recommendations
 - Completing 7-day erosion control inspection
 - Answering RFIs during construction
 - Review of shop drawings

3. Additional Services
 - a. Completion of an approved hydraulic study for the trail within the floodplain of Peachtree Creek

Deliverables include the following:

1. GDOT Approved Phase I ESA Report
2. GDOT Approved Phase II ESA Report
3. GDOT Approved ROW Cost Estimate
4. City Approved arborist tree report
5. FHWA Approved Environmental Categorical Exclusion Re-evaluation
6. Public Meeting Layouts, Documents, Comments & Responses
7. GDOT Approved Bridge Layout (6)
8. GDOT Approved Bridge Foundation Investigation (6)
9. GDOT Approved Final Bridge Design Plans (6)
10. GDOT Approved Final Construction Plans, Specifications, & Cost Estimates for Certifications and Local Letting

0016053
 Heath & Lineback Engineers, Inc.
 21-Jul-22

Project: **Peachtree Creek Greenway Phase 2 - SA 1**
 County: **DeKalb**
 Contract Type: **Firm Fixed Price**
 Fixed Fee %: **10%**

Cost Summary								
By Phase / Firm								
Phase Description	Total Fee	Heath & Lineback Engineers / Team						
		Trail and Bridge Design						
Totals	\$ 737,850.42	\$ 737,850.42	\$ -	\$ -	\$ -	\$ -	\$ -	
Data Collection and Survey Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Geotechnical Investigation	\$ 1,270.06	\$ 1,270.06	\$ -	\$ -	\$ -	\$ -	\$ -	
Trail Alignment and Preliminary Design	\$ 195,021.77	\$ 195,021.77	\$ -	\$ -	\$ -	\$ -	\$ -	
Brookhaven/GDOT Coordination Meetings	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Permitting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Final Design Development & Project Management	\$ 516,500.61	\$ 516,500.61	\$ -	\$ -	\$ -	\$ -	\$ -	
Additional Services	\$ 25,057.98	\$ 25,057.98	\$ -	\$ -	\$ -	\$ -	\$ -	
Prime Fixed Fee	\$ 35,641.06	\$ 35,641.06						

DBE (Yes or No)		No	No	Yes	No	No	Yes	
DBE Participation	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
DBE %								

**City of Brookhaven
COST PROPOSAL**

Proj. No.: **0016053**
 Prime: **Heath & Lineback Engineers, Inc.**
 Date: **21-Jul-22**

Project: **Peachtree Creek Greenway Phase 2 - SA 1**
 County: **DeKalb**
 Contract Type: **Firm Fixed Price**
 Fixed Fee %: **10%**

Heath & Lineback Engineers

Discipline: **Trail Design**

Hours & Cost Estimate

Phase	Description	Total Hours	Total Cost	Total Other Direct Costs	Fixed Fee @ 10%	Total Labor Cost	Direct Labor Cost	Indirect Costs (Overhead) @ 160.00%	FCCM @ 0.05%
TOTALS ==>		338	\$ 92,441.03	\$ 40,949.17	\$ 4,680.26	\$ 46,811.60	\$ 18,001.00	\$ 28,801.60	\$ 9.00
1	Data Collection and Survey Services		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2	Geotechnical Investigation		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3	Trail Alignment and Preliminary Design	90	\$ 28,600.30	\$ 17,390.00	\$ 1,018.94	\$ 10,191.36	\$ 3,919.00	\$ 6,270.40	\$ 1.96
4	Brookhaven/GDOT Coordination Meetings		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5	Permitting		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
6	Final Design Development & Project Management	248	\$ 63,840.73	\$ 23,559.17	\$ 3,661.32	\$ 36,620.24	\$ 14,082.00	\$ 22,531.20	\$ 7.04
7	Additional Services		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Project Level Summary - Labor

	Total	Project Hourly Rates Include Escalation Over Current Rates of:					
		Principal	Project Manager	Sr. Trail Designer	Trail Designer	Trail Technician	Clerical Admin
		\$105.50	\$66.00	\$72.00	\$43.50	\$24.00	\$38.50
TOTAL HOURS ==>	338	2	72	112	68	84	
TOTAL DIRECT LABOR COST ==>	\$ 18,001	\$ 211	\$ 4,752	\$ 8,064	\$ 2,958	\$ 2,016	\$ -

Project Level Summary - Other Direct Costs

	Total Other Direct Costs	Other Direct Costs					
		GDOT Approved ROW Vendor	Arborist (Arboguard)	Accura (Survey)	Edwards Pitman (Environmental)	Perez Planning + Design (Landscape)	Atlanta Consulting Engineers (Lighting)
TOTALS ==>	\$ 40,949	\$ 9,350	\$ 8,040	\$ -	\$ 23,559	\$ -	\$ -

City of Brookhaven
COST PROPOSAL

Proj. No.:
 PI No.: **0016053**
 Prime: **Heath & Lineback Engineers, Inc.**
 Date: **21-Jul-22**

Project: **Peachtree Creek Greenway Phase 2 - SA 1**
 County: **DeKalb**
 Contract Type: **Firm Fixed Price**
 Fixed Fee %: **10%**

Heath & Lineback Engineers

Discipline: **Trail Design**

Hours & Cost Estimate

Phase	Description	Total Hours	Staff Type / Project Hourly Rates / Hours					Includes Escalation of:		
			Principal \$105.50	Project Manager \$66.00	Sr. Trail Designer \$72.00	Trail Designer \$43.50	Trail Technician \$24.00	Clerical Admin \$38.50		
TOTALS ==>		338	2	72	112	68	84			
1	Data Collection and Survey Services									
2	Geotechnical Investigation									
3	Trail Alignment and Preliminary Design	90	2	4	20	24	40			
4	Brookhaven/GDOT Coodination Meetings									
5	Permitting									
6	Final Design Development & Project Management	248		68	92	44	44			
7	Additional Services									

Phase	Description	Total Other Direct Costs	Other Direct Costs								
			GDOT Approved ROW Vendor	Arborist (Arboguard)	Accura (Survey)	Edwards Pitman (Environmental)	Perez Planning + Design (Landscape)	Consulting Engineers (Lighting)			
TOTALS ==>		\$ 40,949	\$ 9,350	\$ 8,040	\$ -	\$ 23,559	\$ -	\$ -	\$ -	\$ -	
1	Data Collection and Survey Services	\$ -									
2	Geotechnical Investigation	\$ -									
3	Trail Alignment and Preliminary Design	\$ 17,390	\$ 9,350	\$ 8,040							
4	Brookhaven/GDOT Coodination Meetings	\$ -									
5	Permitting	\$ -									
6	Final Design Development & Project Management	\$ 23,559				\$ 23,559					
7	Additional Services	\$ -									
		\$ -									
		\$ -									

City of Brookhaven
COST PROPOSAL

Proj. No.:
 PI No.: **0016053**
 Prime: **Heath & Lineback Engineers, Inc.**
 Date: **21-Jul-22**

Project: **Peachtree Creek Greenway Phase 2 - SA 1**
 County: **DeKalb**
 Contract Type: **Firm Fixed Price**
 Fixed Fee %: **10%**

Heath & Lineback Engineers

Discipline: **Trail Design** **Hours & Cost Estimate**

	Total Hours	Principal	Project Manager	Sr. Trail Designer	Trail Designer	Trail Technician	Clerical Admin		
1	Data Collection and Survey Services								
	Project Coordination								
	Import and review of database								
	Total Hours	Principal	Project Manager	Sr. Trail Designer	Trail Designer	Trail Technician	Clerical Admin		
2	Geotechnical Investigation								
	Project Coordination - walls								
	Total Hours	Principal	Project Manager	Sr. Trail Designer	Trail Designer	Trail Technician	Clerical Admin		
3	Trail Alignment and Preliminary Design	90	2	4	20	24	40		
	Discipline Management - Coordination Meetings								
	Prepare / Contribute to Project Justification Statement								
	Information Gathering								
	Conduct Site Visits								
	Prepare Concept Property Database								
	Prepare Concept Layout								
	Prepare Concept Profiles								
	Prepare Concept Typical Sections								
	Prepare Concept Cross Sections								
	Prepare Cost Estimates								
	Prepare Concept Report								
	Prepare Design Data Book (design criteria)								
	Prepare for, Attend, Document Concept Team Meeting								
	Concept Hydrology Study for MS4 Permit / Infeasibility Reports								
	Conceptual Drainage Design								
	Trail QC of Environmental Document/Studies								
	Coordinate with Utility Companies								
	Prepare Preliminary Typical Sections								
	Prepare Preliminary Trail Plans, Profiles, etc. (10 sheets 20 scale)								
	Prepare Preliminary Signing and Marking Plans								
	Prepare Preliminary Trail Cross Sections								
	Prepare Preliminary Drainage Design and Layout								
	Prepare Preliminary Drainage Profiles/Cross Sections								
	Prepare MS4 Analysis / Design including Feasibility analysis								
	Prepare Prelim. Erosion, Sed. & Pollution Control Plans								
	Prepare Drainage Area Map								
	Prepare / Contribute to Landscaping Plans								
	Prepare Preliminary Right of Way and Easements								
	Prepare Retaining Wall Locations and Envelopes (8 walls)								
	Prepare Existing Utility Plans from Utility Co. Markups								
	Prepare Draft Special Provisions								

City of Brookhaven
COST PROPOSAL

Proj. No.:
 PI No.: **0016053**
 Prime: **Heath & Lineback Engineers, Inc.**
 Date: **21-Jul-22**

Project: **Peachtree Creek Greenway Phase 2 - SA 1**
 County: **DeKalb**
 Contract Type: **Firm Fixed Price**
 Fixed Fee %: **10%**

Discipline: Heath & Lineback Engineers Trail Design		Hours & Cost Estimate							
Prepare Special Construction Details									
Prepare Detailed Preliminary Cost Estimates									
Prepare for, Participate in FFPR									
Address FFPR Comments (GDOT and City)									
Internal Quality Assurance Reviews									
Prepare Location and Design Report									
Prepare Right-of-Way Plans (10 parcels)									
RAW Plan Review Revisions (4 parcels)									
Internal Quality Assurance Reviews									
Coordinate with Utility Companies for Relocations									
Prepare Water Fountains (Only included at project termini (Phase I trailhead) - two total fountains. Includes water line work for supply and permitting with City/County.	90	2	4	20	24	40			
Finalize Cover Sheet, Index, General Notes									
Finalize Typical Sections									
Finalize Trail Plans, Profiles, etc.									
Finalize Signing and Marking Plans									
Finalize Drainage Design, Profiles, Cross Sections									
Prepare Detailed Plan Sheets									
Finalize Special Grading Plans									
Finalize MS4 Design									
Finalize Erosion, Sed. & Pol. Ctrl. Plans									
Finalize Retaining Wall Locations and Envelopes (8 walls)									
Finalize Utility Plans									
Prepare Special Construction Details									
Prepare Special Provisions									
Finalize Detailed Construction Quantities, Cost Estimate									
Prepare for, Participate in FFPR									
Address / Implement FFPR Comments (GDOT and City)									
Internal Quality Assurance Reviews									
	Total Hours	Principal	Project Manager	Sr. Trail Designer	Trail Designer	Trail Technician	Clerical Admin		
4	Brookhaven/GDOT Coordination Meetings								
	City Review Meetings (3)								
	PIOH (1)								
	Monthly invoicing (18 months)								
	Pre bid and post bid meeting attendance (2 total)								
	Total Hours	Principal	Project Manager	Sr. Trail Designer	Trail Designer	Trail Technician	Clerical Admin		
5	Permitting								
	Land Disturbance Permit through City								
	GDOT Encroachment Permit								
	Support for 404 Nationwide Permit								
	Support for Stream Buffer Variance								

City of Brookhaven
COST PROPOSAL

Proj. No.:
 PI No.: **0016053**
 Prime: **Heath & Lineback Engineers, Inc.**
 Date: **21-Jul-22**

Project: **Peachtree Creek Greenway Phase 2 - SA 1**
 County: **DeKalb**
 Contract Type: **Firm Fixed Price**
 Fixed Fee %: **10%**

Heath & Lineback Engineers

Discipline: **Trail Design**

Hours & Cost Estimate

		Total Hours	Principal	Project Manager	Sr. Trail Designer	Trail Designer	Trail Technician	Clerical Admin		
6	Final Design Development & Project Management	248		68	92	44	44			
	Discipline Management - Coordination Meetings and Conversations - 3 meetings	12		6	6					
	Answer Design Inquiries after let/prior to construction	12		6	6					
	Answer Design Questions during Construction - RFIs and Shop Drawing Review	112		24	40	24	24			
	Revise Plans for Use-On Construction and/or Amendments	80		20	20	20	20			
	Preconstruction / Construction Status Update Meetings	8		4	4					
	Assist / Prepare 7-day inspection letter	24		8	16					

**City of Brookhaven
COST PROPOSAL**

Proj. No.:
 PI No.: **0016053**
 Prime: **Heath & Lineback Engineers, Inc.**
 Date: **21-Jul-22**

Project: **Peachtree Creek Greenway Phase 2 - SA 1**
 County: **DeKalb**
 Contract Type: **Firm Fixed Price**
 Fixed Fee %: **10%**

Heath & Lineback Engineers

Discipline: **Trail Design**

Hours & Cost Estimate

	Total Hours	Principal	Project Manager	Sr. Trail Designer	Trail Designer	Trail Technician	Clerical Admin		
7									
Additional Services									
Design Variance/Exception (1)									
Additional Public Meetings (1)									
7-Day Erosion Inspection and and Report Lette									
Revise Plans for Use On Construction and/or Amendments									
Support to answer questions during construction									
Retaining Wall Locations and Evenlope (2 walls)									

City of Brookhaven
COST PROPOSAL

Proj. No.:
 PI No.: 0016053
 Prime: Heath & Lineback Engineers, Inc.
 Date: 21-Jul-22

Project: Peachtree Creek Greenway Phase 2 - SA 1
 County: DeKalb
 Contract Type: Firm Fixed Price
 Fixed Fee %: 10%

Discipline: **Heath & Lineback Engineers**
Bridge and Wall Design Hours & Cost Estimate

Phase	Description	Total Hours	Total Cost	Total Other Direct Costs	Fixed Fee @ 10%	Total Labor Cost	Direct Labor Cost	Indirect Costs (Overhead) @ 160.00%	FCCM @ 0.05%
TOTALS ==>		2,746	\$ 645,409.39	\$ 304,781.05	\$ 30,960.80	\$ 309,667.54	\$ 119,080.00	\$ 190,528.00	\$ 59.54
1	Data Collection and Survey Services		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2	Geotechnical Investigation	10	\$ 1,270.06	\$ -	\$ 115.44	\$ 1,154.62	\$ 444.00	\$ 710.40	\$ 0.22
3	Trail Alignment and Preliminary Design	768	\$ 166,421.47	\$ 68,598.09	\$ 8,891.48	\$ 88,931.90	\$ 34,198.00	\$ 54,716.80	\$ 17.10
4	Brookhaven/GDOT Coordination Meetings		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5	Permitting		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
6	Final Design Development & Project Management	1,784	\$ 452,659.88	\$ 236,182.96	\$ 19,676.28	\$ 196,800.64	\$ 75,678.00	\$ 121,084.80	\$ 37.84
7	Additional Services	184	\$ 25,057.98	\$ -	\$ 2,277.60	\$ 22,780.38	\$ 8,760.00	\$ 14,016.00	\$ 4.38
			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Project Level Summary - Labor

	Total Hours	Staff Type / Project Hourly Rates / Hours							Project Hourly Rates Include Escalation Over Current Rates of:	
		Principal	Project Manager	Sr. Bridge Engineer	Bridge Engineer	Bridge Technician	Bridge H&H Engineer			
		\$105.50	\$66.00	\$75.00	\$45.00	\$24.00	\$43.50			
TOTAL HOURS ==>	2,746	56		584	748	1,198	160			
TOTAL DIRECT LABOR COST ==>	\$ 119,080	\$ 5,908	\$ -	\$ 43,800	\$ 33,660	\$ 28,752	\$ 6,960	\$ -	\$ -	

Project Level Summary - Other Direct Costs

	Total Other Direct Costs	Other Direct Costs							
		Travel	Reproduction	MC2 (Geotech)					
TOTALS ==>	\$ 304,781	\$ -	\$ -	\$ 304,781	\$ -	\$ -	\$ -	\$ -	\$ -

City of Brookhaven
COST PROPOSAL

Proj. No.:
 PI No.: **0016053**
 Prime: **Heath & Lineback Engineers, Inc.**
 Date: **21-Jul-22**

Project: **Peachtree Creek Greenway Phase 2 - SA 1**
 County: **DeKalb**
 Contract Type: **Firm Fixed Price**
 Fixed Fee %: **10%**

Discipline: **Heath & Lineback Engineers**
Bridge and Wall Design

Hours & Cost Estimate

Phase	Description	Total Hours	Staff Type / Project Hourly Rates / Hours					Includes Escalation of:		
			Principal \$105.50	Project Manager \$66.00	Sr. Bridge Engineer \$75.00	Bridge Engineer \$45.00	Bridge Technician \$24.00	Bridge H&H Engineer \$43.50		
	TOTALS ==>	2,746	56		584	748	1,198	160		
1	Data Collection and Survey Services									
2	Geotechnical Investigation	10			4		6			
3	Trail Alignment and Preliminary Design	768	20		208	168	372			
4	Brookhaven/GDOT Coordination Meetings									
5	Permitting									
6	Final Design Development & Project Management	1,784	36		348	580	820			
7	Additional Services	184			24			160		

Phase	Description	Total Other Direct Costs	Other Direct Costs							
			Travel	Reproduction	MC2 (Geotech)					
	TOTALS ==>	\$ 304,781	\$ -	\$ -	\$ 304,781	\$ -	\$ -	\$ -	\$ -	\$ -
1	Data Collection and Survey Services	\$ -								
2	Geotechnical Investigation	\$ -								
3	Trail Alignment and Preliminary Design	\$ 68,598			\$ 68,598					
4	Brookhaven/GDOT Coordination Meetings	\$ -								
5	Permitting	\$ -								
6	Final Design Development & Project Management	\$ 236,183			\$ 236,183					
7	Additional Services	\$ -								
		\$ -								
		\$ -								

**City of Brookhaven
COST PROPOSAL**

Proj. No.:
PI No.: **0016053**
Prime: **Heath & Lineback Engineers, Inc.**
Date: **21-Jul-22**

Project: **Peachtree Creek Greenway Phase 2 - SA 1**
County: **DeKalb**
Contract Type: **Firm Fixed Price**
Fixed Fee %: **10%**

Discipline: **Heath & Lineback Engineers**
Bridge and Wall Design

Hours & Cost Estimate

	Total Hours	Principal	Project Manager	Sr. Bridge Engineer	Bridge Engineer	Bridge Technician	Bridge H&H Engineer		
1	Data Collection and Survey Services								
2	Geotechnical Investigation	10		4		6			
	Project Coordination - bridge	10		4		6			
3	Trail Alignment and Preliminary Design	768	20	208	168	372			
	Discipline Management & Coordination								
	Prepare Retaining Wall Locations and Envelopes (Ø standard)								
	Prepare Preliminary Bridge Layout - Bridge 1								
	Internal Quality Control Reviews								
	Prepare Final Wall Plans - (Ø standard)								
	Prepare Final Bridge Plans - Bridge No. 1 (Foundations)								
	Finalize Detailed Construction Quantities, Cost Estimate								
	Internal Quality Control Reviews								
	Structure 1 Boardwalk - Preliminary Layout (260')	74	2	8	24	40			
	Structure 2 Boardwalk - Preliminary Layout (540')	122	2	8	32	80			
	Structure 3 Boardwalk - Preliminary Layout (800')	150	2	8	40	100			
	Structure 4 Boardwalk - Preliminary Layout (160')	58	2	8	16	32			
	Boardwalk Structure 5 - Preliminary Layout (350')	74	2	8	24	40			
	Boardwalk Structure 6 - Preliminary Layout (630')	122	2	8	32	80			
	Boardwalk Structures QC	168	8	160					
4	Brookhaven/GDOT Coordination Meetings								
	Pre-bid and post-bid meeting attendance (2 total)								
5	Permitting								
6	Final Design Development & Project Management	1,784	36	348	580	820			
	Address Final Corrected Plans comments/revisions								
	Prepare / Submit Final Plans, Specifications and Estimate								
	Structure 1 Boardwalk - Final Plans + Details (260')	228	4	24	80	120			
	Structure 2 Boardwalk - Final Plans + Details (540')	324	4	40	120	160			
	Structure 3 Boardwalk - Final Plans + Details (800')	324	4	40	120	160			
	Structure 4 Boardwalk - Final Plans + Details (160')	184	4	20	60	100			
	Boardwalk Structure 5 - Final Plans + Details (350')	228	4	24	80	120			
	Boardwalk Structure 6 - Final Plans + Details (630')	324	4	40	120	160			
	Boardwalk Structures QC	172	12	160					



Heath & Lineback Engineers, Inc.

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hle@heath-lineback.com • phone (770) 424-1668

July 21, 2022

Mr. Don Sherrill, PE, PLS, PMP
Public Works Director
City of Brookhaven
4362 Peachtree Road
Brookhaven, Georgia 30319

RE: Peachtree Creek Greenway Trail from Atlanta to North Druid Hill Road – Phase II
PI#: 0016053, DeKalb County
Request for Authorization of Supplemental Agreement #1

Dear Mr. Sherrill,

This letter serves as Supplement Agreement #1 for the Peachtree Creek Greenway Phase II. This supplemental agreement includes additional scope as required for bridge design services, floodplain studies, construction services, geotechnical services, detailed right-of-way estimate, environmental services and arborist services which are now required due to the City's selected final alignment and GDOT Plan Development Process requirements for federally funded projects. Further explanation of the changes is below.

Design Services:

The project was scoped for a single pre-engineered bridge. During the concept development phase with the City and public, the desired location of the trail was determined to be on the banks of Peachtree Creek for the entirety of the alignment. This resulted in the need for six (6) additional bridge/boardwalk structures totaling approximately 2,740 feet in total length which requires review and approval by the GDOT Bridge Office.

The project also requires a hydraulic study to be completed since much of the trail is located within the floodplain of Peachtree Creek.

The project will also require limited construction services (bid support, RFI responses, 7-day erosion inspection, etc.) that were not included in the original scope.

Additionally, at the request of the City a drinking fountain has been added to the end of the project.

The cost for the additional design services is \$392,120.20.

Heath & Lineback Engineers. Inc.

Geotechnical Services:

The project was scoped for a single Bridge Foundation Investigation. There are now six (6) additional bridges totaling approximately 2,740 feet in length which require Bridge Foundation Investigations and review and approval by the GDOT Office of Material and Testing. The cost for the additional bridge foundation investigations is \$236,182.96.

Right-of-way Estimate

The GDOT Right-of-way office now requires an approved right-of-way detailed estimate to be completed by a GDOT approved right-of-way vendor for right-of-way authorization. This requirement is new from when the project was originally scope in 2020 and has a fee of \$9,350.

Environmental Services:

The project was scope for a single environmental document approval with no re-evaluation for let. GDOT requires that the environmental document and studies be re-evaluated after one year before the project can be certified to go to construction. The project permitting was already included in the original scope and fee. The cost of the re-evaluation is \$23,559.17.

The GDOT required a Phase I Environmental Site Assessment report to be completed as part of the environmental document. The Phase I ESA was not included in the original scope and has a fee of \$28,945.51.

The Phase I ESA report identified three sites within the project corridor as potentially hazardous waste sites. The GDOT requires that any identified sites be further investigated in the field to confirm if contaminated or not. This Phase II ESA report was unanticipated and not included in the original project scope. The cost of the Phase II ESA report is \$39,652.58.

Total additional cost for environmental services is \$92,157.26.

Right-of-way Estimate

The City's tree ordinance requires a report from a certified arborist for land disturbance permits to be approved. The trees were surveyed for location and type in the original scope, but an arborist report was not included. The cost of the arborist report is \$8,040.

Additional fee for this Supplemental Agreement No. 1 is \$737,850.42. The total lump sum fee for the project contract is \$1,323,749.34.

Heath & Lineback Engineers. Inc.

Authorization:

Service is authorized and Notice-to-Proceed is assumed immediate upon your authorization signature and return of this letter.

Sincerely yours,
Heath & Lineback Engineers, Inc.



Patrick Peters, P.E
Project Manager

Authorized by:

Date:

City of Brookhaven
COST PROPOSAL

Proj. No.:
 PI No.: **0016053**
 Prime: **Heath & Lineback Engineers, Inc.**
 Date: **21-Jul-22**

Project: **Peachtree Creek Greenway Phase 2 - SA 1**
 County: **DeKalb**
 Contract Type: **Firm Fixed Price**
 Fixed Fee %: **10%**

Heath & Lineback Engineers

Discipline: **Bridge and Wall Design**

Hours & Cost Estimate

	Total Hours	Principal	Project Manager	Sr. Bridge Engineer	Bridge Engineer	Bridge Technician	Bridge H&H Engineer		
7	Additional Services	184		24			160		
	Prepare FEMA Hydraulic Study (CLOMR)	184		24			160		
	Prepare Preliminary Bridge Layout - Bridge 2								
	Prepare Final Bridge Plans - Bridge No. 2 (Foundations)								
	Prepare preliminary and final wall plans (4 special design)								
	Wall shop drawing review (4 walls)								
	Bridge shop drawing review (1 bridge)								