



AGENDA

City Council Special Called Meeting

5:00 PM – Tuesday, May 20, 2025

William Simmons City Administration Building
240 Carrollton Street, Temple, GA 30179

Call to Order.....Mayor Michael Johnson
Invocation and Pledge of Allegiance.....Mayor Michael Johnson
Approval of Agenda, as presented.....Mayor Michael Johnson
Announcements.....Lisa Jacobson, Mayor Michael Johnson

New Business

1. Authorize the Mayor to sign the contract for preliminary engineering services with Heath & Lineback on the sidewalk project with TAP grant funding and city match (80/20).
2. Receive information on the annual liability insurance renewal from Preston Hagler with Marsh McKlennan Agency.
3. Approve the annual renewal of the City of Temple government's Commercial Insurance policy with the Marsh McLennan Agency, with this new Insurance and Risk Management document providing coverage for the 12-month period starting Friday, May 30, ,2025.

Closing Comments by Mayor and Council

Executive Session, if needed

Adjournment

ENGINEERING SERVICES MASTER AGREEMENT

BETWEEN CITY OF TEMPLE

AND BCC ENGINEERING, LLC d/b/a HEATH & LINEBACK

THIS ENGINEERING SERVICES MASTER AGREEMENT (also referred to as "Contract") is made and entered into on this ____ day of _____, 2025, by and between CITY OF TEMPLE, Georgia, hereinafter referred to as "Client," and BCC Engineering, LLC d/b/a Heath & Lineback, a Georgia corporation and wholly owned subsidiary of BCC Engineering, LLC, its affiliates and subsidiaries, hereinafter referred to as "Consultant. "

RECITALS:

WHEREAS, Client desires to engage the services of Consultant for Engineering Services on the GDOT PI NO. 0019883 CITY OF TEMPLE SIDEWALKS AT 7 LOCATIONS Project that will require the Consultant to furnish the Client with certain consulting services for an extended period involving multiple task orders;

WHEREAS, Consultant has available and offers to provide personnel and facilities necessary to perform the services desired under this Agreement;

NOW, THEREFORE, Client and Consultant agree as follows:

I. DESCRIPTION OF PROJECT

BCC Engineering, LLC d/b/a Heath & Lineback will serve as the Engineering Firm responsible for design services for the City of Temple Sidewalks at 7 Locations (GDOT PI# 0019883) administered by the Department of Public Works.

No work shall begin on a particular task assignment until authorized by the Department of Public Works.

Services to be provided may include but not be limited to concept development, database preparation, environmental document, preliminary plans, utility coordination, right-of-way plans, final plans, construction services, special studies (additional services), and public involvement, and other request as directed by the Department of Public Works.

II. SCOPE OF CONSULTANT SERVICES

Consultant agrees to perform those basic services described in separate written task orders approved by Client and Consultant (the "Services"). This Agreement provides the terms, obligations and conditions which shall control all work. Unless modified in by both parties, duties of Consultant shall not be construed to exceed those

services specifically described in each task order. In the event work is authorized prior to the issuance of a written task order, any services performed by Consultant will be presumed to have been completed under the terms of this Agreement.

III. CONTRACT DURATION

This Contract authorizes BCC Engineering, LLC d/b/a Heath & Lineback to serve as the Engineering Firm responsible for design services for the City of Temple Sidewalks at 7 Locations (GDOT PI# 0019883) for the CITY OF TEMPLE Department of Public Works for a duration of five (5) years from the effective date.

IV. RESPONSIBILITIES OF CLIENT

In addition to payment for the Services performed under this Agreement, Client shall:

1. Assist and cooperate with Consultant in any manner necessary and within its ability to facilitate Consultant's performance under this Agreement.
2. Designate in writing a person to act as Client's representative with respect to this Agreement. Except as otherwise provided by Georgia law, such person shall have complete authority to transmit instructions, receive information, interpret and define Client's policies, make decisions and execute documents on Client's behalf.
3. Furnish Consultant with all technical data in Client's possession including, but not limited to, maps, surveys, drawings, soils or geotechnical reports, and any other information required by, or useful to, Consultant in performance of its Services under this Agreement. Consultant shall be entitled to rely upon the information supplied by Client.
4. Notify Consultant of any known or potential health or safety hazards existing at or near the project site of which Client has knowledge.
5. Work with Consultant to provide access to and/or obtain permission for Consultant to enter upon all property, whether or not owned by Client, as required to perform and complete the Services.
6. If Consultant scope of work includes services during construction, to the extent authorized by Georgia law, Client will require the construction contractor to indemnify and hold harmless Consultant, its officers, employees, agents, and consultants against claims, suits, demands, liabilities, losses, damages, and costs, including reasonable attorneys' fees and all other costs of defense, arising out of the performance of the work of the contractor, breach of contract, or willful misconduct of the contractor or its subcontractors, employees, and agents.

Client will require the contractor to name Consultant, its directors, officers and employees as additional insureds on the contractor's general liability insurance and/or Owner's and

Contractor's Protective Policy (OCP), and any builder's risk, or other property insurance purchased by the contractor to protect work in progress or any materials, supplies, or equipment purchased for installation therein.

Client will furnish contractor's certificates of insurance evidencing that Consultant, its officers, employees, agents, and consultants are named as additional insureds on contractor's general liability and property insurance applicable to the Project. Contractor's policies shall be primary, and any such insurance carried by the Consultant shall be excess and noncontributory. The certificates shall provide that Consultant be given 30 days' written notice prior to any cancellation thereof.

V. AMERICANS WITH DISABILITIES ACT

Any other provision of this Agreement to the contrary notwithstanding, unless otherwise specified in the Scope of Services, Client shall have sole responsibility as between Client and Consultant for compliance with the Americans With Disabilities Act ("ADA") 42 U.S.C. 12101 et seq., and the related regulations.

VI. AUTHORIZATION AND COMPLETION

In signing this Agreement, Client grants Consultant specific authorization to proceed with work as directed in written task orders.

VII. COMPENSATION

For the Services described, Client agrees to pay, and Consultant agrees to accept the total compensation in accordance with compensation terms included in each task order. The methods of payment shall be: Lump sum, cost plus fixed fee, cost per unit of work, or specific rates of compensation. A single contract may contain different payment methods as appropriate for compensation of different elements of work.

Cost plus fixed fee and specific rates of compensation rate schedule may be revised annually or more often but shall not exceed the actual cost of direct costs plus fixed fee and indirect expenses based on the most recent Georgia Department of Transportation (GDOT) audited overhead cost rate. Compensation may be billed monthly in summary form. Payment to Consultant is due upon presentation of invoice and a progress report indicating the services completed during the billing period.

As long as Consultant has not defaulted under this Agreement, Client shall pay Consultant within 30 days of the date of Consultant's invoices for services performed and reimbursable expenses incurred under this Agreement. If Client has reason to question or contest any portion of any such invoice,

amounts questioned or contested shall be identified and notice given to Consultant within 15 days of the date of the invoice. Any portion of any invoice not contested shall be deemed to be accepted and approved for payment and shall be paid to Consultant within 30 days of the date of the invoice. The Client agrees to cooperate with Consultant in a mutual effort to resolve promptly any contested portions of the Consultant's invoices.

In the event any uncontested portions of any invoice are not paid within 30 days of the date of Consultant's invoice, interest on the unpaid balance shall accrue beginning with the 31st day at the maximum interest rate permitted by law, and Consultant shall have the right to suspend work per Article XVI, Suspension of Work.

VIII. RESPONSIBILITY OF CONSULTANT

A. Standard of Care - Professional Services

Subject to the limitations inherent in the agreed scope of work as to the degree of care, amount of time and expenses to be incurred, and subject to any other limitations contained in this Agreement, Consultant shall perform its Services in accordance with generally accepted standards and practices customarily utilized by competent engineering firms in effect at the time Consultant's Services are rendered.

B. Reliance upon Information Provided by Others

If Consultant's performance of services hereunder requires Consultant to rely on information provided by other parties (excepting Consultant's subcontractors), Consultant shall not independently verify the validity, completeness, or accuracy of such information unless otherwise expressly engaged to do so in writing by Client.

C. Consultant's Opinion of Costs

Client acknowledges that construction cost estimates, financial analyses and feasibility projections are subject to many influences including, but not limited to, price of labor and materials, unknown or latent conditions of existing equipment or structures, and time or quality of performance by third parties. Client acknowledges that such influences may not be precisely forecasted and are beyond the control of Consultant and that actual costs incurred may vary substantially from the estimates prepared by Consultant. Consultant does not warrant or guarantee the accuracy of construction or development cost estimates.

D. Limitation of Liability Associated with Work of Other Engineers and Design Builders

Client acknowledges that preliminary work under this agreement may be used by the Client or others who will be considered Designers of Record. The Consultant acting as Engineer in no way relieves the Client or others for duties associated with their role of Engineer of Record for their designs. Those engineers shall retain full responsibility for performance and liability associated with their designs.

E. Construction Phase Services

1. Consultant's Activities at Construction Site. The presence of Consultant's personnel at a construction site, whether as on-site representative, resident engineer, construction manager, or otherwise, does not make Consultant responsible for those duties that belong to Client and/or construction contractors or others, and does not relieve construction contractors or others of their obligations, duties, and responsibilities, including, but not limited to, construction methods, means, techniques, sequences, and procedures necessary for completing all portions of the construction work in accordance with the contract documents, any health or safety programs and precautions required by such construction work, and any compliance with applicable laws and regulations. Any inspection or observation of the contractor's work is solely for the purpose of determining that the work is generally proceeding in conformance with the intent of the project specifications and contract documents. Consultant makes no warranty or guarantee with respect to the performance of a contractor. Consultant has no authority to exercise control over any construction contractor in connection with their work or health or safety programs and precautions.
 2. Shop Drawing and Submittal Review. If required by Consultant's Scope of Services, Consultant shall review shop drawings or other contractor submittals for general conformance with the intent of the contract documents. Consultant shall not be required to verify dimensions, to engineer contractor's shop drawings or submittals, nor to coordinate shop drawings or other submittals with other shop drawings or submittals provided by contractor.
 3. Record Drawings. Record drawings will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. Consultant is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings, but only to the extent that Consultant could not have identified such errors and omissions using reasonable due diligence.
- F. Lobbying. Consultant will comply with all requirements of 49 Code of the Federal Regulations Part 20 with regard to lobbying and the requirements for certification and disclosure and will ensure that all subconsultants likewise comply.

IX. ASSIGNMENT OF TASKS TO AFFILIATES

Assignment of tasks, contractual rights or obligations are not contemplated or permitted under this agreement. This will not preclude the use of specialty sub-consultants approved by Client (see Article XV Subcontracts).

X. ASBESTOS/HAZARDOUS MATERIALS

Consultant and Consultant's subcontractors shall have no responsibility for the discovery, handling, removal, or disposal of or exposure of persons to asbestos or hazardous or toxic materials that are present in any form at the Project site. Professional services related to or in any way connected with the investigation, detection, abatement, replacement, use, specification, or removal of products, materials, or processes containing asbestos or hazardous or toxic materials are beyond the scope of this Agreement. Client shall be solely responsible for notifying all appropriate governmental agencies, including the potentially effected public, of the existence of any hazardous or toxic materials located on or at the project site at any time.

In the event Consultant encounters asbestos or hazardous materials at the jobsite, Consultant may, at its option and without liability for damages, suspend the performance of services on the Project until such time as Client and Consultant mutually agree on an amendment to this Agreement to address the issue, or Client retains another specialist consultant or contractor to identify, classify, abate and/or remove the asbestos and/or hazardous materials.

XI. CONSULTANTS WORK PRODUCT

A. Scope

Consultant's work product which is prepared solely for the purposes of this Agreement, including, but not limited to, drawings, test results, recommendations and technical specifications whether in hard copy or electronic form, shall become the property of Client when Consultant has been fully compensated as set forth herein. Consultant may keep copies of all work product for its records.

Consultant and Client recognize that Consultant's work product submitted in performance of this Agreement is intended only for the project described in this Agreement. Client's alteration of Consultant's work product or its use by Client for any other purpose shall be at Client's sole risk.

B. Electronic Copies

If requested, solely as an aid and accommodation to Client, Consultant may provide copies of its work product documents in computer-readable media ("electronic copies," "CADD"). These documents will duplicate the documents provided as work product but will not bear the signature and professional seals of the registered professionals responsible for the work. Client is cautioned that the accuracy of electronic copies and CADD documents may be compromised by electronic media degradation, errors in format translation, file corruption, printing errors and incompatibilities, operator inexperience and file modification. Consultant will maintain the original copy, which shall serve as the official, archived record of the electronic and CADD documents.

The Consultant and the Client agree that any papers, interim reports, forms, and other material which are a part of work under this Agreement are to be deemed a "work made for hire", as such term is defined in the Copyright Laws of the United States. As a "work made for hire", all copyright interests in said works will vest in the Client upon creation of the copyrightable work. If any papers, interim reports, forms, or other material which are a part of work under this Agreement are deemed by law not to be a "work made for hire", any copyright interests of the Consultant are hereby assigned completely and solely to the Client. Publication rights to any works produced under this Agreement are reserved by the Client.

C. Records Keeping and Availability

The Consultant shall maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred under this Agreement including all subsequent projects/task orders for inspection by the Client, the Department, the Federal Highway Administration, or any authorized representative of the Client, the Department or the Federal Highway Administration. Such materials shall be available at the Consultant's offices at reasonable times during the Agreement period and for a period of three (3) years from the date of final payment. The Consultant shall use cost principles as described in Federal Acquisition Regulation (48 Code of Federal Regulations (CFR) 1-31), Subpart 1-31.2.

The Consultant shall require all its sub-consultants to maintain all such records, and all other information pertaining to cost, and further to require that said sub-consultants make these materials available to the Client and/or the Federal Highway Administration. The Consultant shall affirmatively enforce this provision of this Agreement with the sub-consultants upon request of the Client or Federal Highway Administration.

Evidence of costs incurred by a sub-consultant shall be made available at its offices for audit and inspection by the Client, the Federal Highway Administration, or any authorized representative of the Client or Federal Highway Administration at reasonable times during the Agreement period between the Consultant and the sub-consultant and for a period of three (3) years after written acceptance by the Consultant. It shall be the Consultant's responsibility to notify the Client, in writing, of the completion of the sub-consultant's portion of the services so that the records of the sub-consultant can be audited within the three (3) year retention period. Failure to do so may result in the Consultant being liable for any costs incurred by the sub-consultant for the sub-consultant's phase of the services which is not supported by the proper documentation. Final cost for the sub-consultant's phase of the services will be made after total costs are determined

by the final audit of the consultants.

All the provisions stipulated in this Agreement will be applicable to sub-consultants who entered into a sub-contract as a result of this Agreement. Refusal by Consultant to incorporate and enforce, or to ensure that the federal, state, or local governments have access to supporting documentation for every dollar billed on said Agreement, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

D. Audit Rights

The Client's Office of Audits shall have the right to audit the financial records of the Consultant to determine the allowable costs incurred by the Consultant. An audit will consist of, but is not limited to, a review of the labor hours and rates, negotiated overhead rates (provisional or actual), fixed fee(s), subcontracts and/or the direct costs established in the Agreement.

The Client's Office of Audits has the right to require supporting documentation for every dollar billed. For example, labor hours and rates would require the following supporting documents; time sheets, payroll reports, job costing reports, and other records as deemed necessary. Direct costs such as travel, meals, products, and services require actual invoices or receipts. Sub-consultant costs also require supporting documentation, including the contract with the Consultant, invoices, and payment records.

Consultant agrees that failure to comply with the above audit and financial reporting requirement could be cause for the Client to suspend payments, to terminate this Agreement, or to require a refund of all monies receive under this Agreement.

E. Accuracy of Work

The Consultant shall be responsible for the accuracy of the Project Deliverables and shall promptly correct its errors and omissions without additional compensation from the Client. Acceptance of the work by the Client will not relieve the Consultant of the responsibility for subsequent correction of errors, the clarification of any ambiguities, or for the costs associated with any additional work, which may include construction costs caused by negligent errors in, or negligent omissions from, the plans prepared by the Consultant.

At any time during the construction of the Project provided for by the plans or during any phase of work performed by others based on data secured by the Consultant under this Agreement, the Consultant shall confer with the Client for the purpose of interpreting the information obtained and to correct any errors or omissions. These consultations, clarifications, or corrections shall be made without added compensation to the Consultant other than what has been provided for under the terms of this Agreement. The Consultant shall give immediate attention to these changes so there will be minimum delay to others.

XII. INDEMNIFICATION

A. Indemnification of Client

Consultant agrees to indemnify and hold Client harmless from and against any liability to the extent arising out of the negligent errors or negligent omissions of Consultant, its agents, employees, or representatives, in the performance of Consultant's duties under this Agreement.

B. Consequential Damages

Regardless of any other term of this Agreement, in no event shall either party be responsible or liable to the other for any incidental, consequential, or other indirect damages.

XIII. CONSULTANTS INSURANCE

Consultant shall procure and maintain the following minimum Insurance:

1. Commercial general liability insurance, including personal injury liability, blanket contractual liability and broad-form property damage liability coverage. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000
2. Automobile bodily injury and property damage liability insurance covering owned, non-owned, rented, and hired cars. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000
3. Statutory workers' compensation and employer's liability insurance as required by state law.
4. Professional liability insurance. The policy limit shall be not less than \$1,000,000.

Client shall be named as additional insured on policies 1 and 2 above. Upon request, a certificate of insurance will be provided to Client with a 30-day written notice in the event the above policies are cancelled.

XIV. CONFIDENTIALITY

Consultant agrees it will maintain the confidentiality of material it receives from Client which Client has clearly identified as "Confidential" and will not disclose, distribute, or publish to any third party such confidential information without the prior permission of Client. Notwithstanding the foregoing, Consultant shall have no confidentiality obligation with respect to information that:

- 1) becomes generally available to the public other than as a result of disclosure by Consultant or its agents or employees;
- 2) was available to Consultant on a non-confidential basis prior to its disclosure by Client;

- 3) becomes available to Consultant from a third party who is not, to the knowledge of Consultant, bound to retain such information in confidence is otherwise a public record in accordance with the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq.

In the event Consultant is compelled by subpoena, court order, or administrative order to disclose any confidential information, Consultant shall promptly notify Client and shall cooperate with Client prior to disclosure so that Client may take necessary actions to protect such confidential information from disclosure.

XV. SUBCONTRACTS

Consultant shall be entitled, to the extent determined appropriate by Consultant and Client, to subcontract any portion of the services to be performed under this Agreement. Any subcontracts are subject to approval by the Client prior to being executed.

XVI. SUSPENSION OF WORK

Work under this Agreement may be suspended as follows:

1. By Client. By written notice to Consultant, Client may suspend all or a portion of the Work under this Agreement if unforeseen circumstances beyond Client's control make normal progress of the Work impracticable. Consultant shall be compensated for its reasonable expenses resulting from such suspension including mobilization and demobilization. If suspension is greater than 30 days, then Consultant shall have the right to terminate this Agreement in accordance with Article XVII, Termination of Work.
2. By Consultant. By written notice to Client, Consultant may suspend the Work if Consultant reasonably determines that working conditions at the Site (outside Consultant's control) are unsafe, or in violation of applicable laws, or in the event Client has not made timely payment in accordance with Article VII, Compensation, or for other circumstances not caused by Consultant that are interfering with the normal progress of the Work. Consultant's suspension of Work hereunder shall be without prejudice to any other remedy of Consultant at law or equity.

XVII. TERMINATION OF WORK

A. Unsatisfactory Performance

If the Client determines that the performance of the Consultant is not satisfactory, the Client may notify the Consultant of the deficiency with the requirement that the deficiency be corrected within a specified time; but not in excess of (10) business days. If, within ten (10)

business days after such notice, the Consultant does not proceed in a satisfactory way to remedy the faults specified in said notification, the Agreement may be terminated immediately. The Consultant will be paid for the work satisfactorily performed as determined by the Client subject to and in accordance the provisions of SECTION VII COMPENSATION.

Should the Client determine that the unsatisfactory performance is sufficiently serious that it creates a public safety hazard or that immediate harm to the Client right-of-way, the Client roadway facilities or other Client property may occur, the Client may provide notice either telephonically or e-mail to the Consultant that the Consultant shall immediately stop work and thereafter the Client may undertake any actions it deems necessary to cure the unsatisfactory performance, with reasonable expenses directly related to the cure to be reimbursed by Consultant.

B. For Default on the Part of the Consultant

The nonperformance by the Consultant of any material terms, covenant or condition of this Agreement shall constitute a default. If the services of the Consultant are terminated by the Client for default on the part of the Consultant, the amount to be paid shall be determined by the Client with consideration given to the actual costs incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the Client at the time of termination, the cost to the Client of employing another firm to redo or complete the work required and the time which may be required to do so, and other factors which affect the value to the Client of the work performed at the time of termination

C. For Convenience

If the Client requires termination of the Agreement for reasons other than unsatisfactory performance or default of the Consultant, the Client will notify the Consultant of such termination, with instructions as to the effective date of work stoppage or specify the state of work at which the Agreement is to be terminated. If the Agreement is terminated before performance is completed, the Consultant will be paid for work satisfactorily performed up to the effective date of work stoppage as identified by the Client.

D. For Insufficient Funds

If the Client determines that there are insufficient funds for any Project or for a Task Order under this Agreement, this Agreement may be terminated immediately by the Client in its sole discretion upon notice to the Consultant and without further obligation on the part of the

Client. In such an event, the Consultant will be paid for all work performed through the date of such termination subject to and in accordance the provisions of SECTION VII COMPENSATION.

E. Criminal Activity

The Client reserves the right to cancel and terminate this Agreement in the event that any employee or agent of the Consultant is convicted for any crime arising out of or in conjunction with any work being performed by the Consultant.

F. Payment upon Termination

In the event of termination, Consultant shall perform such additional work as is reasonably necessary for the orderly closing of the Work. Consultant shall be compensated for all work performed prior to the effective date of termination, plus work required for the orderly closing of the Work, including: (1) authorized work performed up to the termination date plus termination expenses, including all labor and expenses, at Consultant's standard billing rates, directly attributable to termination; (2) all efforts necessary to document the work completed or in progress; and (3) any termination reports requested by Client.

XVIII. ASSIGNMENT

This Agreement is binding on the heirs, successors, and assigns of the parties hereto. Except as otherwise set forth under Article IX, Assignment of Tasks to Affiliates, this Agreement may not be assigned by Client or Consultant without prior, written consent of the other.

XIX. NO BENEFIT FOR THIRD PARTIES

The services to be performed by Consultant are intended solely for the benefit of Client, and no benefit is conferred on, nor contractual relationship established with any person or entity not a party to this Agreement. No such person or entity shall be entitled to rely on Consultant's services, opinions, recommendations, plans, or specifications without the express written consent of Consultant. No right to assert a claim against the Consultant, its officers, employees, agents, or consultants shall accrue to the construction Contractor or to any subcontractor, supplier, manufacturer, lender, insurer, surety, or any other third party as a result of this Agreement or the performance or nonperformance of the Consultant's services hereunder.

XX. FORCE MAJEURE

Consultant shall not be responsible for delays caused by circumstances beyond its reasonable control, including, but not limited to (1) strikes, lockouts, work slowdowns or stoppages, or accidents, (2) acts of God, (3) failure of Client to furnish timely information or to approve or disapprove Consultant's instruments of service promptly, and (4) faulty performance or nonperformance by Client, Client's independent consultants or contractors, or governmental agencies. Consultant shall not be liable for damages arising out of any such delay, nor shall the Consultant be deemed to be in breach of this Agreement as a result thereof.

XXI. INTEGRATION

This Agreement represents the entire understanding of Client and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may not be modified or altered except in writing signed by both parties. Any purchase order issued by Client, whether or not signed by Consultant, and any terms and conditions contained in such purchase order which are inconsistent with this Agreement shall be of no force and effect.

XXII. SEVERABILITY

If any part of this Agreement is found unenforceable under applicable laws, such part shall be inoperative, null, and void insofar as it conflicts with said laws, but the remainder of this Agreement shall be in full force and effect.

XXIII. CHOICE OF LAW/JURISDICTION

This Agreement shall be administered and interpreted under the laws of the State of Georgia.

The Consultant agrees that all work done as part of this Agreement will comply fully with all administrative and other requirements established by applicable federal and state laws, rules and regulations, and assumes responsibility for full compliance with all such laws, rules and regulations. The Consultant understands that the following items specifically apply to this Agreement, but do not exclude any other applicable federal or state laws or requirements, and that it will comply with and require its sub-consultants to comply with:

- A. Provisions of Section 45-10-20 through 45-10-28 of the Official Code of Georgia Annotated relating to Conflict of Interest and State of Georgia employees and officials trading with the State of Georgia have been complied with in full.
- B. Pursuant to O.C.G.A. Sec. 50-5-85, Consultant hereby certifies that it is not currently engaged in, and agrees that for the duration of this contract, it will not

engage in a boycott of Israel.

C. Regulations for COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, as amended, and 23 Code of Federal Regulations (CFR) 200 et seq. NOTICE TO CONSULTANTS COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS.

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

1. **Compliance with Regulations:** The Consultant 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 Agreement.
2. **Non-discrimination:** The Consultant, with regard to the work performed by it during the Agreement shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
3. **Sanctions for Non-compliance:** In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Client shall impose such sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a Withholding of payments to the Consultant under the Agreement until the Consultant complies, and/or
 - b Cancellation, termination or suspension of the Agreement, in whole or in part.
4. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiations made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential sub-consultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations

relative to nondiscrimination on the ground of race, color, sex, or national origin.

5. **Information and Reports:** The Consultant will 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 of information and its facilities as may be determined by the Client or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Client, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

6. **Incorporation of Provisions:** The Consultant will include the provisions of this article XXIII Clauses B and C (1-5) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant shall take such action with respect to any sub-consultant or procurement as the Client 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 Consultant becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as result of such direction, the Consultant may request the State of Georgia to enter into such litigation to protect the interests of the State of Georgia, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interest of the United States.

XXIV. ATTORNEYS' FEES

In the event either party commences legal proceedings against the other, then the prevailing party shall, in addition to any other recovery, be entitled to recover its reasonable attorneys' fees and all other costs of such proceeding.

XXV. NOTICES

All notices required under this Agreement shall be delivered by facsimile, personal delivery, mail or e-mail and shall be addressed to the following persons:

W. Allen Krivsky, P.E.
Senior Vice President
Heath & Lineback

Lisa Jacobson
City Administrator
CITY OF TEMPLE

2390 Canton Road, Building 200
Marietta, GA 30066
770-424-1668
akrivsky@heath-lineback.com

240 Carrollton Street
Temple, GA 30179
770-562-3369 Ext. 109
ljacobson@templega.us

Notice shall be effective upon delivery to the above addresses. Either party may notify the other that a new person has been designated by it to receive notices, or that the address for the delivery of such notices has been changed, provided that, until such time as the other party receives such notice in the manner provided for herein, any notice addressed to the previously-designated person and/or delivered to the previously-designated address shall be effective.

XXVI. COST PRINCIPLES AND RECORDS RETENTION

The general cost principles and procedures for the negotiation and administration, and the determination of allowance of costs under this Agreement will be as set forth in the Code of Federal Regulations, Title 48, the Official Code of Georgia, and other pertinent Federal and state regulations, as applicable, with the understanding that if there is conflict between state regulations and Federal regulations then the more restrictive of the applicable regulations will govern.

The Consultant and any sub-consultants shall keep available for inspection and maintain all books, documents, papers, accounting records, and evidence pertaining to costs incurred on the Project and make available at all reasonable times to the Client and any reviewing federal agencies, for a period of three (3) years after receipt of final payment, with the following exception.

If any litigation, claim, or audit arising out of, in connection with, or related to this Agreement is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained at a minimum for two (2) years after the time in which such litigation, claim or audit involving the records is completed. Records shall be made available upon request to the Client at all times during the term of this Agreement. Copies of these documents and records will be furnished to the Client upon request and may be audited by Client representatives.

XXVII. DISADVANTAGED BUSINESS ENTERPRISE INFORMATION

A Disadvantaged Business Enterprise ("DBE") is defined pursuant to the 49 Code of the Federal Regulations Part 26.

The Client has adopted a 0% overall annual goal for DBE participation on all federally funded projects. This goal is not to be considered as a fixed quota, set aside or preference. The DBE goal

can be met by prime consultants, sub- consultants, or other vendor supplied services included in this Agreement.

By execution of this Agreement the Consultant certifies they have made a good faith effort to meet or exceed the City's DBE goal. Further, the Parties agree to the proposed DBE participation indicated in this Agreement. In the event of a conflict between the DBE goal stated and the Client's overall annual goal for DBE participation, the Consultant shall seek to attain the maximum DBE participation goal feasible. In the event that the DBE goal is not met, the Consultant may request a waiver from the Equal Opportunity Office. Justification or good faith effort must accompany the request for the waiver.

The Client will monitor the Consultant's submittals for their agreed upon DBE participation. With each invoice submitted, the Consultant shall submit a DBE report in the format directed by the Client project manager. Failure to submit such a report with the request for payment will result in the invoice being returned to the Consultant with no penalty to the Client.

XXVIII. AUTHORIZATION

The persons executing this Agreement on behalf of the parties hereto represent and warrant that the parties have all legal authority and authorization necessary to enter into this Agreement, and that such persons have been duly authorized to execute this Agreement on their behalf.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

BCC Engineering, LLC d/b/a Heath &
Lineback
Signature _____

City of Temple, Public Works
Signature _____

Printed Name _____

Printed Name _____

Title _____

Title _____

Federal Tax ID number: