



Action Requested/Required:

- Vote/Action Requested
- Discussion or Presentation Only
- Public Hearing
- Report Date: _____
- Hearing Date: _____
- Voting Date: _____

Department: Community Development **Presenter(s) & Title:** Bethany Watson
City Engineer

Agenda Item Title:

Discussion on the Proposal to Provide Wall Foundation Investigation for the River Mill Pedestrian Bridge at the Mill on Etowah from Heath & Lineback in the amount of \$26,200.00

Summary:

The City has given H&L permission to proceed with concept Alternate 1 for the River Mill Pedestrian Bridge. As mentioned in the submitted concept report for the project, Alternate 1 includes a soil nail wall on the west bank of the Etowah River. A soil nail wall will be required to hold up the slope of the adjacent hill to accommodate the approaching trail path to the pedestrian bridge over the Etowah River. The use of a wall structure will also minimize the need of elevated ramp structures to the west of the river. Due to the requirement of a soil nail wall, a Wall Foundation Investigation (WFI) will need to be performed by our geotechnical subconsultant at an additional cost to the project to obtain information on the physical properties of the soil within the proposed wall envelope.

Budget Implications:

Budgeted? Yes No N/A
Total Cost of Project: Check if Estimated
Fund Source: General Fund Water & Sewer Sales Tax Other:

Staff Recommendations:

Staff recommends approval of Proposal to Provide Wall Foundation Investigation for the River Mill Pedestrian Bridge at the Mill on Etowah from Heath & Lineback in the amount of \$26,200.00

Reviews:

Has this been reviewed by Management and Legal Counsel, if required? Yes No

Attachments:

Proposal



Heath & Lineback

2390 CANTON ROAD • BUILDING 200 • MARIETTA, GEORGIA 30066-5393
hle@heath-lineback.com • phone (770) 424-1668

6/26/2024

City of Canton
110 Academy Street
Canton, GA 30114

Attention: Bethany Watson
City Engineer

Reference: **Project # 231101_River Mill Pedestrian Bridge at the Mill on Etowah**
Proposal to Provide Wall Foundation Investigation (WFI)

Dear Bethany,

Thank you for considering BCC Engineering, LLC, d/b/a Heath & Lineback's Fee Proposal to provide additional geotechnical services for the referenced Project. We appreciate the opportunity to collaborate with you on this Project and look forward to future opportunities.

We acknowledge that the City has given H&L permission to proceed with concept Alternate 1. As mentioned in the submitted concept report for the project, Alternate 1 includes a soil nail wall on the west bank of the Etowah River. A soil nail wall will be required to hold up the slope of the adjacent hill to accommodate the approaching trail path to the pedestrian bridge over the Etowah River. The use of a wall structure will also minimize the need of elevated ramp structures to the west of the river. Due to the requirement of a soil nail wall, a Wall Foundation Investigation (WFI) will need to be performed by our geotechnical subconsultant at an additional cost to the project to obtain information on the physical properties of the soil within the proposed wall envelope. This letter serves as our proposal for the additional geotechnical services concerning the WFI.

Basic Services (Scope of Services)

BCC Engineering, LLC, d/b/a Heath & Lineback proposes to provide:

- Geotechnical Services for completion of Wall Foundation Investigation (WFI)

Deliverables

The following items shall be completed by the consultant and delivered to the Client during the term of the contract:

- Complete WFI Report

Schedule

No changes to the schedule are required at this time.

Basic Services Fee

We propose to provide the described Basic Services for a Lump Sum fee not to exceed the amount listed below:

- **Proposed Soil Nail Wall WFI** **\$26,200**

Payments

Invoices will be delivered monthly based on the percentage of services completed and Client shall make payment in full within thirty (30) days after presentation thereof.

Reimbursable expenses and Additional Services will be billed monthly as they are incurred.
If this proposal is not accepted within 90 days, it shall become void.

Our proposal, Exhibit A "General Provisions", Exhibit B "Nova Proposal to Provide Wall Foundation Investigation (WFI)", and Exhibit C "Work Authorization" are attached to and made a part of this Agreement.

We hope this Proposal meets your expectations. If this Proposal is acceptable to you, please sign Exhibit C and return a copy to us. We will sign and return one copy to you.

We look forward to engineering your vision.

Sincerely,

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

A handwritten signature in blue ink, appearing to read "Theodore B. Sparks", is written over a light blue rectangular background.

Theodore B. Sparks, P.E.
Structural Project Manager
TBS/tbs

Attachments

EXHIBIT A - GENERAL PROVISIONS

1. **General Provision:** This Exhibit is part of the Letter Proposal dated 06/21/2024 between City of Canton (Client) and BCC Engineering, LLC dba Heath & Lineback (Engineer) for the Project # 231101_River Mill Pedestrian Bridge at the Mill on Etowah project and shall be incorporated into any agreement between the Engineer and the Client (the "Agreement"). An order by the Client for the commencement of the work and services to begin shall be deemed an acceptance of the Agreement. In case of any conflict between these General Provisions and any other contract document between the Client and Engineer, these General Provisions shall control.
2. **Authority:** The following persons are the only individuals who have authority to sign any form of contract document or otherwise bind the company in writing or verbally: Jose Munoz, Ariel Millan, Luis Rodriguez, Victor Herrera, Alfred Lurigados, Anthony Jorges, Allen Krivsky, John Heath, Warren Dimsdale, Patrick Peters, Phil Ravotti. No other individual has the authority, whether actual or apparent, to bind the Engineer in any respect.
3. **Project Fee:** The Project Fee as presented in this Proposal anticipates that the Project will be completed within 1 year from the date of the Proposal. In event that there is a delay, for any reason, the Engineer reserves the right to adjust its Service fee rates in use when the work is actually performed.
4. **Payments of Services:** Invoices will be submitted by the Engineer to the Client monthly for services performed and expenses incurred pursuant to this Agreement during the prior month. When the Engineer's compensation is on a lump sum fee basis, the statements will be based upon the portion of total services actually completed at the time of billing. Interest of one percent (1%) per month will accrue on accounts unpaid within thirty (30) days of the presentation of the invoice. If the Client fails to make any payment due the Engineer for services and expenses within sixty days (60) days after the Engineer's transmittal of its invoice, the Engineer may, after giving seven (7) days' written notice to the Client, either suspend services under this Agreement until it has been paid in full amounts due for services and expenses or terminate its services altogether, without prejudice to any other remedies available in law or equity. Any unpaid sums will remain due after such suspension or termination, along with all costs incurred by Engineer relating to the suspension or termination of its services. Should the Engineer be required to retain the services of an attorney to collect any unpaid sums (whether through demand, negotiations, or any dispute resolution proceedings), the Engineer shall be entitled to all costs and attorneys' fees associated with the collection effort regardless of whether or not suit is filed.
5. **Non-Contingency:** The Client acknowledges and agrees that the payment for services rendered and expenses incurred by the Engineer pursuant to this Agreement is not subject to any contingency unless the same is expressly set forth in this Agreement.
6. **Estimates of Cost:**
 - (a) Since the Engineer has no control over the cost of labor, materials, equipment, or other services furnished by others, or over methods of determining prices, or over competitive bidding or market conditions, any and all opinions as to costs rendered hereunder, including, but not limited to, opinions as to the costs of construction materials, shall be made on the basis of its experience and qualifications and represent its best judgment as an experienced and qualified professional engineer familiar with the construction industry; however, the Engineer cannot and does not guarantee that proposals, bids, or actual costs will not vary from opinions or probable cost prepared by it. If at any time the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator to make such determination. Engineering services required to bring costs within any limitation established by the Client will be paid for as "Additional Services" hereunder by the Client.
 - (b) If a limit with respect to construction or other costs is established by written agreement between the Client and the Engineer, the following will apply:
 - (i) The acceptance by the Client at any time during the performance of services hereunder of a revised opinion of probable cost in excess of the then established cost limit will constitute a corresponding revision in the previously agreed cost limit to the extent indicated in such revised opinion.
 - (ii) Any cost limit so established will include a contingency of ten percent unless another amount is agreed upon in writing.

- (iii) The Engineer will be permitted to determine what materials, equipment, component systems and types of construction are to be included in the drawings and specifications prepared by it pursuant hereto and to make reasonable adjustments in the extent of the project to bring it within the cost limit.
- (iv) If bids for construction have not been received within six (6) months after completion of the Engineer's design hereunder, the established cost limit will not be binding on the Engineer, and the Client shall consent to an adjustment in such cost limit commensurate with any applicable change in the general level or prices in the construction industry between the date of completion of the Engineer's designs hereunder and the date on which proposals or bids are sought.
- (v) If the lowest bona fide proposal or bid exceeds the established cost limit, the Client shall (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the project within a reasonable time, or (3) cooperate in revising the project's extent or quality. In the case of (3), the Engineer shall, without additional charge, modify the plans and specifications prepared by it hereunder as necessary to bring the subject cost within the cost limit. The providing of such service will be the limit of the Engineer's responsibility in this regard and, having done so, the Engineer shall be entitled to payment for services in accordance with this Agreement.

7. **Reuse of Documents:** Except as otherwise stated herein, all documents prepared or furnished by the Engineer pursuant to this Agreement are instruments of Engineer's professional service, and Engineer shall retain ownership and property interest therein, including all copyrights. Upon payment in full of services rendered, Engineer grants Client a license to use instruments of Engineer's professional service for the purpose of constructing, occupying, or maintaining the Project. Reuse or modification of any such documents by Client, or anyone related to the Project acting through Client, without Engineer's written permission, or use of documents after termination, shall be at their sole risk, and Client agrees to indemnify, defend and hold Engineer harmless from all claims, damages, and expenses, including attorney's fees, arising out of such reuse by Client or by others acting through Client. Furthermore, any such verification or adaptation will entitle the Engineer to further compensation at rates to be agreed upon by the Client and the Engineer.

8. **Termination:** The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, all expenses subject to reimbursement hereunder and other reasonable expenses incurred by the Engineer as a result of such termination are due immediately. In the event the Engineer's compensation under this Agreement is a fixed fee, upon such termination, the amount payable to the Engineer for services rendered will be determined using a proportional amount of the total fee based on a ratio of the amount of work done, as reasonably determined by the Engineer, to the total amount of work which was to have been performed, less prior partial payments, if any, which have been made.

9. **Insurance:** The Engineer is protected by Worker's Compensation insurance (and/or employer's liability insurance), professional liability insurance and commercial general liability insurance for bodily injury and property damage and will furnish certificates of insurance upon request. If the Client requires increased insurance coverage, the Engineer will, if specifically directed by the Client, take out additional insurance, if obtainable, at the Client's expense.

10. **Limitation of Liability:** In performing its professional services hereunder, the Engineer will use that degree of care and skill ordinarily exercised, under similar circumstances, by members of its profession practicing in the same or similar locality. No other warranty, expresses or implied, is made or intended by the Engineer's undertaking herein or its performance of services hereunder. It is agreed that, to the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the Engineer and its officers, directors, partners, employees, agents, and sub-consultants, and any of them, to the Client and anyone claiming by, through, or under the Client, for any and all claims, losses, costs, or damages of any nature whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including, but not limited to, any act or omission, negligence, tort, strict liability, and/or breach of contract or warranty, express or implied, shall not exceed the total compensation received by the Engineer under this Agreement, or the total amount of \$50,000, whichever is less. Under no circumstances shall the Engineer be liable for extra costs or other consequences due to changed conditions or for costs related to the failure of the contractor or material men to install work in accordance with the plans and specifications.

11. **Mutual Waiver of Consequential Damages:** Engineer and Client waive consequential damages (such as loss profits, lost revenues, loss of use, loss of financing, and loss of reputation) for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages whether arising in contract, warranty, tort (including negligence), strict liability, or equity, or that might arise out of the parties' indemnification obligations.
12. **Verification of Existing Conditions:** Inasmuch as the renovation/rehabilitation of existing structures or design services requires that certain assumptions be made by the Engineer regarding existing conditions, and because some of these assumptions may not be verifiable without the Client's expending substantial sums of money, the Client agrees to bear all costs, losses and expenses, including the cost of the Engineer's Additional Services, arising from the discovery of unknown conditions, or from any deficiencies or inaccuracies in any information or documentation furnished to the Engineer by the Client or any local or county agencies. Engineer shall be entitled to rely on the accuracy, completeness, and timeliness of services and information furnished by Client, its representatives, agents, and subconsultants. Engineer shall have no responsibility for the technical content of Client's its representatives', agents' and consultants' services and information but shall provide written notice to Client if Engineer becomes aware of any error, omission, or inconsistency in such services or information.
13. **Permitting/Zoning:** The Client is herein notified that several City, State, and Federal environmental, zoning, and regulatory permits may be required for this Project. Engineer will assist the Client in preparing these permits at the Client's direction. However, the Client acknowledges that it has the responsibility for submitting application and fees, obtaining, and abiding by all required permits. Furthermore, the Client holds the Engineer harmless from any losses or liabilities resulting from such permitting or regulatory action.
14. **Safety:** Should the Engineer provide periodic observations or monitoring services at the job site during construction, Client agrees that, in accordance with generally-accepted construction practices, the contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work and compliance with OSHA regulations, and that these requirements will apply continuously and not be limited to normal working hours. Any monitoring of the contractor's procedures conducted by the Engineer is not intended to include review of the adequacy of the contractor's safety measures in, on, adjacent to, or near the construction site.
15. **Indemnification:** In addition, and notwithstanding any other provisions of this Agreement, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer and its directors, employees, agents, and sub-consultants from any against all damage, liability or cost, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with this Project or the performance by any of the parties above named of the services under this Agreement, excepting only those damages, liabilities, or costs attributable to the sole negligence or willful misconduct of the Engineer.
16. **Inspections:** Unless otherwise specified in the scope of work, Client agrees that the Engineer will not be expected to make exhaustive or continuous on-site inspections but that periodic observations appropriate to the construction stage shall be performed. The words "supervision," "inspection," or "control" are used to mean periodic observation of the work and the conducting of tests by the Engineer to verify substantial compliance with the plans, specifications, and design concepts. Continuous inspections by our employees do not mean that the Engineer is observing placement of all materials. "Full-time inspection" means that an employee of the Engineer has been assigned for eight-hour days during regular business hours.
17. **Construction Contract & Responsibilities:** Client understands and acknowledges that (1) Engineer has no control over, charge of, or responsibility for construction activities or jobsite safety on the Project; (2) Contractor shall coordinate, supervise, and direct all portions of the construction work and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, jobsite safety, and security; and (3) Engineer shall not be responsible for the Contractor's failure to perform his work in accordance with the requirements of the applicable contract documents.

18. **Taxes:** The purchaser of services described herein shall pay any and all applicable taxes in the manner and in the amount as required by law whether these taxes are in effect at the date of this contract or if they become applicable in the future.
19. **Photographs:** Photographs of any completed project embodying the services of the Engineer provided hereunder may be made by the Engineer, shall be considered as its property, and may be used by it for publication.
20. **Assignment and Subcontracting:** Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and the Engineer, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and the Engineer and not for the benefit of any third party. Neither the Client nor the Engineer shall assign, sublet, or transfer any rights under or interest in (including, without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this Paragraph shall prevent the Engineer from employing such independent professional associates and consultants as the Engineer may deem appropriate to assist in the performance of services hereunder.
21. **Confidentiality:** The Client hereby consents to the use and dissemination by the Engineer of data, and information provided to the Engineer for the performance of the services hereunder. Notwithstanding the foregoing, with respect to any facts, data, or information specifically identified in writing by the Client as confidential, the Engineer shall use reasonable care to maintain the confidentiality of such identified material.
22. **Controlling Law and Venue:** This Agreement shall be governed by the laws of the State of Florida, and any suit or demand for arbitration (if required by contract) filed against the Engineer for anything related to its services covered by this Agreement shall be filed in Miami-Dade County, Florida. As a condition precedent to the commencement of any dispute resolution proceedings between the Client and Engineer, shall first be subject to a meet-and-confer session as a condition prior to mediation, which session shall take place within thirty (30) days after a request by either party. Prior to such session, the parties shall exchange relevant information that will assist in resolving the claim, dispute or controversy. If no resolution is obtained, they shall submit the dispute to mediation and shall bear equally the costs of the mediation, said mediation to take place in Miami-Dade County. The Parties shall jointly appoint a mutually acceptable mediator; they shall seek assistance from the American Arbitration Association (“AAA”) in such appointment if they have been unable to agree upon such appointment.
23. **Binding Effect:** This Agreement shall bind, and the benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors, and assigns.
24. **Merger; Amendment:** This Agreement constitutes the entire Agreement between the Engineer and the Client, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Engineer and the Client.
25. **Severability:** Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction, shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.



June 6, 2024

HEATH & LINEBACK ENGINEERS, INC.
2390 Canton Road,
Building 200
Marietta, Georgia 30066

Attention: Theodore B. Sparks, P.E., S.E., C.B.I.
Structural Division Manager

Subject: Proposal to Provide Wall Foundation Investigation (WFI)
RIVER MILL DISTRICT PEDESTRIAN BRIDGE OVER ETOWAH RIVER
City of Canton, Cherokee County, Georgia
NOVA Proposal Number 10102-2024042

Dear Mr. Sparks:

NOVA Engineering and Environmental, LLC (NOVA) appreciates the opportunity to submit this proposal to provide a Wall Foundation Investigation (WFI) for the River Mill District Pedestrian Bridge over the Etowah River project located in the City of Canton, Cherokee County, Georgia. This proposal summarizes our understanding of the project, describes our approach to our scope of services, and presents our cost estimate and schedule.

PROJECT INFORMATION

Our understanding of the site and requirements for this project are based on information provided in Heath & Lineback's email dated February 1, 2024. The proposed retaining wall will be a soil nail wall of approximately 250 to 300 linear feet and about 10 to 15 feet in height.

Based on the site reconnaissance, weathered rock and boulders were observed in the hillside excavation adjacent to the proposed pedestrian bridge on the west side of the Etowah River. We will utilize an all-terrain vehicle (ATV) mounted drill for the drilling operations. Clearing will be required to access the location of the proposed borings as shown on **Exhibit A** to provide access to the drill rig.

Exhibit A



GEOTECHNICAL SERVICES

NOVA's proposed scope of services for the project is intended to evaluate the subsurface conditions within the project limits as discussed herein, relative to the presence of "old" fill materials, soil conditions, partially weathered rock, rock, and groundwater. Drilling, sampling, and testing on this project will be conducted in general accordance with ASTM and GDOT OMAT's Guidelines for Geotechnical Studies. We understand that this is a locally funded project, and the WFI report will not be subject to review by GDOT OMAT. Additional fees will be required if the WFI report is subjected to GDOT OMAT review to address report revisions.

General/Assumptions

This proposal is limited to the scope of services discussed herein. The assessment of site environmental conditions, the detection of pollutants in the soil, rock or groundwater, wetlands evaluation, or a site-specific seismic study are beyond the scope of this exploration. No post-design services, such as roadway/bridge testing, foundation load test monitoring, CEI services, etc. are included. If requested, NOVA can provide these services under a different scope of work and for an additional fee.

The following assumptions were made regarding the specific scope of services detailed in subsequent sections of this submittal:

- Field services required will occur during our normal business hours. We will coordinate access to the site with you or your designee.
- Assumed maintenance of traffic (MOT) is not required.
- Use a surveying level and measurement rod to obtain top of boring elevations and **referenced to Heath & Lineback provided benchmark located at the proposed wall location.**
- Upon completion of drilling activities, borings will be backfilled with cuttings from the drilling process. Future subsidence of soil-filled boreholes is probable, and NOVA will not be responsible for such subsidence. The use of drill equipment will result in minor property alterations. Please note that we have not included fees or a scope of work to provide site restoration or compensation for alleged damages resulting from our on-site activities.
- The work will be completed within the existing State/County rights-of-way (ROW) or to be acquired ROWs. No private property owner coordination or special permits for drilling in creeks, streams or “Waters of the State” will be required.
- All field services will be completed in one mobilization by the drill crew.
- Soil samples will be collected at selected depth intervals via the Standard Penetration Test method (ASTM D 1586). The “N-value” will be recorded at each sample location for subsequent use in the engineering evaluation. The N-value provides an empirical indication of soil strength and is determined by the cumulative number of blows required by a 140-pound hammer, operating freely over a 30-inch drop, to advance a 2-inch O.D. split-barrel sampler one foot into the soils, after initial penetration of 6 inches.
- The reports will be prepared under the supervision of a professional engineer registered in the State of Georgia.

WALL FOUNDATION INVESTIGATION (WFI)

Based on GDOT's guidelines, for walls shorter than 300 feet, a minimum of two (2) soil test borings are required, and for walls greater than 300 feet, soil test borings must be spaced and drilled at every 200-ft interval. Due to potential for highly variable subsurface conditions and presence of weathered/rock, four borings are proposed for this proposed retaining wall. Minor clearing with a forestry mulcher will be required for borings at the top of the embankment.

Soil test borings for the walls will be drilled as per GDOT's guidelines, which state that test boring shall be drilled to a depth of 1.5 times the height of the proposed wall from the bottom of the wall footing. The existing embankment is estimated to be about 20 feet higher than the base. Based on this we propose to drill two Standard Penetration Test (SPT) borings at the top of the embankment to an approximate depth of 50 feet or auger refusal. Additionally, two (2)

SPT borings will be drilled near the base of the proposed wall to 25 feet or auger refusal. Rock coring is not included in the scope of drilling.

Approximately 40 feet of auger only drilling is anticipated. Auger only drilling is required to collect Shelby tube samples for specialized laboratory testing of consolidation-undrained triaxial shear test with pore pressure measurements. Unified Soil Classification System (USCS) tests will be conducted on select soil samples at each boring.

Upon completion of the field exploration, we will evaluate the data obtained and prepare a Wall Foundation Investigation report with borings logs, associated figures, lab results, recommended geotechnical design parameters and our global stability analyses.

Laboratory Testing

Our proposed laboratory testing program will include visual classification of the soil samples collected during the drilling process, in general accordance with the USCS and ASTM standards. In addition, we propose to perform up to the following number of laboratory testing depending on subsurface conditions:

Proposed Soil Nail Wall

USCS Tests	8 tests
Natural Moisture Content.....	6 tests
Consolidated-Undrained (CU) Tri-axial Shear Test with Pore Pressure Measurements	2 tests

Soil samples from the field sampling as well as the laboratory tests, will be discarded upon submittal of the final report unless otherwise requested in writing.

SITE UTILITIES/ACCESS

NOVA's Subcontract Driller will contact the State Utility Protection Center (UPC) prior to beginning field activities, as required by law. The UPC typically requires a 72-hour notice to mark utilities on rights-of-way adjacent to the site perimeter. **The UPC representatives will typically not enter private property.** If this planned exploration will be outside the areas where the State Utility Locate Service will not field-mark underground utilities, you (our Client) acknowledge and accept the risks that damage to life and property is possible without further effort to locate and field-mark underground utilities.

NOVA has included a private utility locate service for an additional fee to mark the utilities at the specific boring or excavation locations, but beyond normal due-diligence and working with your personnel, we cannot be responsible for encountering utilities. Please note that marking utilities across the entire site is not included in NOVA's scope of services. If you elect to continue without performing proper utility locate, then you agree to hold harmless, defend and indemnify NOVA, its employees, shareholders, and principals from any resulting liability incurred.

We assume that the field services will occur during regular business hours, Monday through Friday, excepting holidays. We will coordinate access to the site with you or your designee.

COMPENSATION

The lump sum fee for our proposed scope of services, as previously described, will be:

- ◆ **PROPOSED SOIL NAIL WALL WFI: \$ 26,200 LS**

The noted costs include the electronic submittal of the written reports to our client, or to other parties specified by you. We will not exceed the authorized budget without prior approval.

SCHEDULE

Based upon our current workload, we can initiate our services on the project within 15 business days of receiving written authorization to proceed. We anticipate that the field services will take approximately 1 day to complete. Laboratory testing will take approximately 3 weeks. The Wall Foundation Investigation (WFI) report should be available within 4 weeks of the completion of laboratory testing.

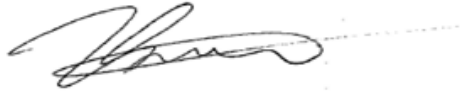
AUTHORIZATION

This proposal is an agreement for our services defined herein and is valid for a period of ninety (90) days from the date of issuance. It was prepared specifically for the Client and its designated representatives and may not be provided to others without NOVA's express permission. The person authorizing this proposal on behalf of the Client does hereby warrant that they have full authority to do so.

To formalize the agreement between us, please execute a copy of the attached Professional Services Agreement (please check each authorized service) and return it to us. The attached NOVA General Terms and Conditions will govern the work described in this proposal. Exceptions to this proposal, and/or special requirements not covered in this proposal should be listed on the Proposal Acceptance Sheet. The final report cannot be issued without formal, written authorization.

NOVA appreciates the opportunity to offer our services on the subject project. Please contact us if you have any questions or if we may be of further service.

Sincerely,
NOVA Engineering and Environmental, LLC



Usenmfon I. Udo, P.E.
Geotechnical Services Manager



Eric K. Tay, P.E.
Transportation Sector Leader

Attachments: Professional Services Agreement
Limitations
General Terms and Conditions

**NOVA ENGINEERING AND ENVIRONMENTAL, LLC
PROFESSIONAL SERVICES AGREEMENT**

DATE: June 6, 2024	PROPOSAL NO.: 10102-2024042
<p><u>PROJECT NAME AND ADDRESS</u></p> <p>Wall Foundation Investigation (WFI) RIVER MILL DISTRICT PEDESTRIAN BRIDGE OVER ETOWAH RIVER Cherokee County, Georgia</p>	<p><u>CLIENT NAME AND ADDRESS</u></p> <p>HEATH & LINEBACK ENGINEERS, INC. 2390 Canton Road Building 200 Marietta, GA 30066</p> <p>Attn: Theodore B. Sparks, P.E., S.E., CB.I. Email: tsparks@heath-lineback.com Main Phone: (770) 424-1668 Mobile (678) 457-4453</p>
<u>ACCEPTED</u>	
<p>• PROPOSED SOIL NAIL WALL WFI \$ 26,200 LS <input type="checkbox"/></p>	

All work will be in accordance with NOVA's General Terms and Conditions attached hereto. NOVA will invoice monthly and our payment terms are net 30 days. This proposal is valid for 90 days. If this proposal is acceptable, please sign and return this professional service agreement along with the attached proposal to etay@usanova.com.

AUTHORIZED BY:	INVOICE TO:
Signature	Firm
Name	Name Email
Title	Address
Date	Federal ID # or Social Security #

CURRENT OWNER CONTACT INFORMATION, IF APPLICABLE:	
Name	Firm
Title	Address
Email	Phone

LIMITATIONS



NOVA's findings and opinions will be based on information that is available and obtained at the time of the assessment through site reconnaissance, standard investigatory techniques used in the industry at this time, records review, and other related activities. It is possible that other information exists or may subsequently become known that may impact or change the site assessment after NOVA's services are complete.

In conducting the service detailed herein and preparing the reports, NOVA will review, interpret, and rely upon information provided by others, including, but not limited to, the CLIENT, individuals, government authorities, subcontractors, and other entities. NOVA will not perform an independent evaluation of the accuracy or completeness of such information, and NOVA will not be responsible for any errors or omissions contained in such information.

The geotechnical findings, conclusions, and recommendations presented in the geotechnical report will represent our professional opinions concerning subsurface conditions at the site. The opinions presented will be relative to the dates of our site work and should not be relied on to represent conditions at later dates or at locations not explored. The opinions included will be based on information provided to us, the data obtained at specific locations during the exploration and our experience. If additional information becomes available that might impact our geotechnical opinions, it will be necessary for NOVA to review the information, reassess the potential concerns, and re-evaluate our conclusions and recommendations.

Regardless of the thoroughness of a geotechnical exploration, there is the possibility that conditions between borings will differ from those encountered at specific boring locations, that conditions are not as anticipated by the designers and/or the contractors, or that either natural events or the construction process have altered the subsurface conditions. These variations are an inherent risk associated with subsurface conditions in this region and the approximate methods used to obtain the data. These variations may not be apparent until construction.

The professional opinions presented in the geotechnical report will not final. Field observations and foundation installation monitoring by the geotechnical engineer, as well as soil density testing and other quality assurance functions associated with site earthwork and foundation construction, are an extension of this report. Therefore, NOVA should be retained by the owner to observe all earthwork and foundation construction to document that the conditions anticipated in this exploration actually exist, and to finalize or amend our conclusions and recommendations. NOVA is not responsible or liable for the conclusions and recommendations presented in this report if NOVA does not perform these observation and testing services.

Our professional geotechnical services will be performed, our findings obtained, our conclusions derived, and our recommendations prepared in accordance with generally accepted geotechnical engineering principles and practices in the State of Tennessee. This warranty is in lieu of all other statements or warranties, either expressed or implied.

NOVA's reports, along with the findings and conclusions contained in each report, either in completed form, summary form, or by extraction, is prepared, and intended, for the sole use of you, our CLIENT, and therefore may not contain sufficient information for other purposes or parties. The CLIENT is the only intended beneficiary of these reports. The contents of NOVA's reports will continue to be the property of NOVA and are protected by copyright. NOVA's reports may not be disclosed to, used by, or relied upon by, any person or entity other than the CLIENT without the express written consent of NOVA.

Authorization for disclosure to a third party or authorization for third-party reliance on a NOVA report will be considered by NOVA upon the written request of the CLIENT. NOVA reserves the right to deny authorization to allow disclosure or reliance of NOVA's report to third parties.

NOVA Engineering and Environmental LLC
GENERAL TERMS AND CONDITIONS

1. SCOPE OF WORK

NOVA Engineering and Environmental LLC (NOVA) shall perform the services limited to and specifically defined in this Agreement (including any Project Specific condition attached hereto) and shall invoice the Client in accordance with the compensation section of this Agreement. Any estimate of cost to the Client as stated in this Agreement or any of the accompanying schedules shall not be considered as a fixed price, but only an estimate (unless otherwise specifically stated in this Agreement). NOVA will provide additional services under this Agreement as requested by the Client in writing subject to acceptance by NOVA. Client will be invoiced for additional services at NOVA's standard rates or as mutually agreed upon, including but not limited to, re-reviews, re-inspections, re-tests, stand-by time, scope changes, services outside normal business hours or services provided beyond the estimated project duration. To the extent these General Terms and Conditions are part of a proposal for services, the proposal shall be valid for ninety (90) days unless otherwise stated. Once a proposal is accepted, these General Terms and Conditions shall apply to all services performed and shall survive any termination of the Agreement or completion of services.

Notwithstanding any other provision of this Agreement or any other agreement entered into by NOVA with respect to the Project, NOVA shall not have control or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, for safety precautions and programs in connection with work or activities at the project site, for the acts or omissions of any contractor, subcontractors or any other persons performing any work or undertaking any activities at the project site, or for the failure of any of them to carry out any work or perform their activities in accordance with their contractual obligations, including, but not limited to, the requirements of any drawings, specifications or other documents prepared by NOVA (if any).

The review of contractor submittals (for example, shop drawings or project samples) is not included in NOVA's Scope of Services unless specifically set forth in this Agreement. If such services are to be provided, the review is conducted only for the limited purpose of checking for conformance with information given and the design concept expressed in the construction drawings and specifications prepared by NOVA (or by others if so set forth in the Agreement) and is not conducted for the purpose of determining the accuracy and completeness of details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the contractor, all of which remain the responsibility of the contractor to the extent required by its contract. NOVA's review shall not constitute approval of safety precautions or of construction means, methods, techniques, sequences, or procedures. NOVA's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the drawings, specifications and other documents applicable to the contractor's obligations, NOVA shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the drawings, specifications and other documents prepared by NOVA.

Neither site visits for any purpose nor the observation by NOVA of any contractor's work are included in NOVA's scope of services unless specifically set forth in this Agreement. If NOVA is engaged to visit the site and conduct observations of a contractor's work, NOVA shall provide such services at the intervals agreed with Client in writing (or if no such interval is agreed upon in writing, then at such intervals as NOVA deems appropriate given any budgetary constraints imposed by Client), subject to any limitations on the number of such visits set forth in this Agreement. The general purpose of such observations is to become generally familiar with the progress and quality of the construction work as described in the drawings, specifications or other documents specifically identified in this Agreement and to determine, in general, if such construction work is proceeding in accordance with such drawings, specifications or other identified documents. NOVA shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such construction work. On the basis of such on-site observations as an engineer, NOVA shall keep Client informed of the progress and quality of such construction work and shall endeavor to guard the Client against defects and deficiencies in such work of contractor.

2. RIGHT OF ENTRY

The Client, at its sole cost and expense, will provide for reasonable right of entry of NOVA personnel to perform the scope of work and all necessary equipment to the project site or sites, in order to complete the work.

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3. INVOICES

NOVA will submit invoices to Client monthly and a final bill upon completion of services. There shall be no retainage, unless otherwise agreed upon in the Agreement. NOVA shall furnish insurance certificates, lien waivers, affidavits or other reasonably available documents as and when requested by Client provided all amounts due to NOVA have been paid.

Payment is due within thirty (30) days after the receipt of invoice. Interest charges will start to accrue forty-five (45) days from the invoice date. Client agrees to pay an interest charge equal to the lesser of one and one-half percent (1½%) per month, or the maximum rate allowed by law, on past due accounts. NOVA shall be entitled to recover any and all costs incurred, including attorneys' fees ("Collection Costs") in connection with its efforts to collect past due sums. The minimum amount of such Collection Costs is agreed to be the lesser of (1) ten percent (10%) of the past due amount or (2) the maximum amount allowed by law. Any attorney's fees, collection fees or other costs incurred in collecting any delinquent amount shall be paid by Client. The Client agrees to pay NOVA for its services in accordance with this Agreement, regardless of whether or not he has been paid by his client.

In the event that the Client disputes any items billed in an invoice, the Client shall notify NOVA within ten (10) days specifying the complaint and, in the meantime, all amounts to which there is not a reasonable and good faith dispute to payment shall be paid promptly. Any dispute not raised within such ten (10) day period is waived. The Client's failure to make timely payment due under this Agreement in accordance with the terms of this Agreement shall constitute a material breach of this Agreement and NOVA shall be entitled, upon seven (7) days written notice to Client to terminate this Agreement or, at its option, suspend its performance until all sums then due under this Agreement have been paid.

If NOVA is called upon by Client, or subpoenaed by any other person, to testify or produce records in an action at law, equity, arbitration, or in a pre-trial hearing or conference, as to any work performed by anyone in connection with the Project, NOVA shall be paid by the Client for all time spent while testifying and preparing therefor and producing such records in accordance with the rates set forth in the attached Agreement.

4. SAFETY

NOVA is only responsible for the safety on site of its own employees and subcontractors. However, this shall not be construed to relieve the Client or any of its contractors from their responsibilities for maintaining a safe jobsite. Neither the professional activities of NOVA, nor the presence of NOVA's employees and subcontractors shall be construed to imply NOVA has any responsibility for job safety or any activities on site performed by personnel other than NOVA's employees or subcontractor.

5. STANDARD OF CARE

Service performed by NOVA under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the location where the services are to be performed ("Standard of Care").

Notwithstanding anything in this Agreement to the contrary, NOVA shall only be liable to pay damages to Client arising out of or in connection with the Services or this Agreement, to the extent that such damages are caused by, and are in proportion to, the negligence of, or breach of the Standard of Care by, NOVA. If NOVA is considered to be liable jointly with any third parties, the portion of damages payable by NOVA shall be limited to the portion of liability which is attributable to NOVA's breach of the Standard of Care on a comparative fault basis. Client acknowledges that NOVA's services will be rendered without any warranty, express or implied and all such warranties are expressly waived by Client. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party, including the project owner (if not the Client) and any contractor, subcontractor, vendor or material supplier, against either the Client or NOVA.

6. INSURANCE & GENERAL LIABILITY

NOVA represents and warrants that it and its agents, staff and consultants employed by it are protected by worker's compensation insurance and that NOVA has such coverage under public liability and property damage insurance policies which NOVA deems to be adequate and in line with other professional service firms currently practicing under similar conditions. Certificates for all such policies of insurance shall be provided to Client upon request in writing. Additional insurance, if requested in writing by Client prior to commencement of services, will be obtained by NOVA, if procurable, and charged to the Client.

NOVA Engineering and Environmental LLC
GENERAL TERMS AND CONDITIONS

The Client shall cause any contractor responsible for the construction of work (or related activities) designed, specified or reviewed by NOVA or responsible for any other activities relating to NOVA's services, to hold harmless, indemnify and defend NOVA, to the fullest extent permitted by law, from and against any and all damages, liabilities, claims, suits, costs and expenses (including reasonable attorney's fees and other costs of investigation and defense) arising in connection with the negligence, breach of contract or strict liability of any contractor or any of their subcontractors or any of their vendors. Client shall also name, and cause such contractor(s) to name, NOVA as additional insureds on its and each such contractor's Commercial General Liability insurance policy and Umbrella/Excess liability insurance policy (with policy limits at the greater of the limits required for the Project or Five Million Dollars per occurrence and in the per project aggregate) and to maintain such coverage until the completion of its contract and to provide NOVA with a Certificate of Insurance so naming NOVA as an additional insured on an annual basis for so long as Client and/or contractor maintains or is obligated to maintain such coverage.

7. DISPUTES

All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, (collectively "Disputes") shall be governed by Georgia law and shall be submitted to non-binding mediation before and as a condition precedent to pursuing any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, Client and NOVA shall select a neutral mediator by mutual agreement. If a Dispute cannot be settled through mediation as set forth above, then such Dispute, if involving amounts less than \$100,000, shall be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree following termination of mediation. Notwithstanding any other provisions of this Section, in no event shall a demand for mediation be made, or any other proceeding initiated, more than two (2) years from the date the party making demand knew or should have known of the dispute or five (5) years from the date of substantial completion of Nova's Services, whichever date shall occur earlier. All mediation, arbitration, or litigation shall take place in Cobb County, Georgia, unless the parties agree otherwise. The fees of the mediator or arbitrator(s) and the costs of transcription and other costs incurred by the mediator or arbitrator(s) shall be apportioned equally between the parties. Thereafter, with respect to any Disputes involving amounts equal to or greater than \$100,000, if any legal action or other proceeding is brought with respect to such Dispute, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, costs and expenses, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

8. DELAYS IN WORK

In no event, will NOVA will be responsible for delays in the work which is beyond our reasonable control or caused by Client or its agents, consultants, contractors or subcontractors. Stand-by or non-productive time for delays in our work caused by Client or its agents, consultants, contractors or subcontractors may be charged to the Client unless provided for as a separate item in the Agreement or otherwise as mutually agreed upon.

9. TERMINATION

This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In all events of termination, NOVA shall be paid for services performed up to and through the date of termination plus reasonable expenses to demobilize. In the event of termination, or suspension for more than three (3) months, NOVA shall, at its option, be permitted to terminate this Agreement upon seven (7) days written notice to Client. Further, if said termination is prior to NOVA's completion of all reports contemplated by this Agreement, NOVA may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of NOVA in completing such analyses, records, and reports and shall be due and payable by Client promptly upon invoice from NOVA, together with all reasonable termination costs and expenses.

10. ASSIGNS

This Agreement may not be assigned by either party without the prior written consent of the other party, provided, however, that NOVA may assign this Agreement in the case of sale of all or substantially all of its assets or equity. To the extent consent is required it shall not be unreasonably withheld.

11. OWNERSHIP OF DOCUMENTS

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by NOVA, as instruments of service, shall remain the property of NOVA and shall retain all common law, statutory and other reserved rights, including copyrights ("NOVA Documents"). Contingent on the Client's full and timely payment of all sums due under this Agreement, NOVA grants Client a non-exclusive license to use the final and complete versions of the NOVA Documents solely and exclusively for purposes set forth in this Agreement. The foregoing license does not extend to any CADD files or 3D model created by NOVA, unless expressly set forth herein. If NOVA Documents are prepared "for construction", the license granted in the preceding sentences of this Paragraph permits the Client to authorize the contractor and subcontractors, and material or equipment suppliers to reproduce applicable portions of NOVA Documents solely and exclusively for use in performing their services or construction for the Project. NOVA Documents shall only be used for their intended purpose. NOVA Documents are not to be used on other projects, for alternations, extensions or additions to this Project or for completion of this Project by others, except by agreement in writing and with appropriate compensation to NOVA. If Client is granted a license with respect to any CADD files or 3D models, Client agrees to be bound to the terms of the NOVA License for Use of Electronic Files and 3D Models. Client agrees that all reports and other work furnished to the Client or his agents, which are not paid for, will be returned upon demand and will not be used by the Client for any purpose whatsoever. NOVA will retain all pertinent records relating to the services performed for a period of three (3) years following submission of the report, during which period the records will be made available to the Client at all reasonable times and an administrative fee may be charged to the Client for retrieval and reproduction of such records.

12. FAILURE TO FOLLOW RECOMMENDATIONS

NOVA will not be held liable for problems that may occur if NOVA's recommendations are not followed.

13. LIMITATION OF LIABILITY

Client agrees that the work created pursuant to this Agreement is for the sole and exclusive use of Client and is not for the benefit of any third parties. Client acknowledges and agrees that in no event shall the liability of NOVA in connection with this Agreement or the services provided pursuant thereto exceed the fee actually paid to and received by NOVA under this Agreement or \$100,000 whichever is greater. This Agreement and the services to be performed hereunder shall in no way be construed as a guarantee of deficient-free construction.

Notwithstanding anything to the contrary contained in this Agreement or provided for under any applicable law, neither NOVA nor Client shall be liable to the other party, either in contract or in tort, for any consequential, incidental, indirect, special or punitive damages, including without limitation any delays damages, loss of future revenue, income or profits or any diminution of value, financing costs or costs of lost opportunities relating to this Agreement, the services or the Project, whether or not the possibility of such damages has been disclosed to the other party in advance or could have been reasonably foreseen by such other party.

14. INDEMNIFICATION

Client agrees, to the fullest extent permitted by law, to indemnify, defend and hold harmless NOVA, and its officers, directors, agents and employees and any of them (collectively, the "NOVA Parties") from all claims, actions, damages, liabilities, losses, costs and expenses, including reasonable attorney's fees and defense costs (collectively "Losses"), arising out of, or in any way connected with, the performance or nonperformance of NOVA's obligations under this Agreement (including, without limitation, any act of negligence, omission or default by the NOVA Parties), up to an amount not to exceed the greater of \$100,000 or twelve times the amount of the fees charged for the services provided by NOVA in connection with this Agreement and the services hereunder. The parties agree that the foregoing amount of said indemnification bears a reasonable commercial relationship to the services provided by NOVA and that the indemnification provided herein is considered a part of the project specifications. Notwithstanding the foregoing, the NOVA Parties shall not be entitled to indemnification hereunder for any Losses resulting from the NOVA Parties'

NOVA Engineering and Environmental LLC GENERAL TERMS AND CONDITIONS

gross negligence, or willful, wanton or intentional misconduct or for any statutory violation or punitive damages (except to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of Client or any of the Client's contractors, subcontractors, sub-subcontractors, materialmen or agents of any tier or their respective employees). Except as set forth in the preceding sentence, the NOVA Parties rights to indemnification shall include, without limitation, indemnification for any and all Losses which may be suffered by any NOVA Party as a result of any (i) failure of Client to follow or implement any of its recommendations, (ii) any breach by Client of its obligations under the Agreement, and (iii) exposure of NOVA's employees or agents to any hazardous materials at the jobsite.

Upon notice by the NOVA Parties, Client shall defend the NOVA Parties with counsel chosen by NOVA Parties, subject to the consent of Client, which consent shall not be unreasonably withheld. The parties agree that this duty to defend is separate and distinct from any indemnity obligation, and the duty shall extend to any claims asserted against the NOVA Parties arising out of or related to the project, regardless of whether Client is obligated to indemnify the NOVA Parties for the loss, claim, or damage.

15. HAZARDOUS MATERIALS

It is acknowledged by both parties that NOVA's scope of services does not include any services related to asbestos or hazardous or toxic materials unless specifically identified in our scope of services. In the event NOVA or any other party encounters asbestos or hazardous materials at the jobsite, or should it become known in any adjacent areas that may affect the performance of NOVA's services, NOVA may, without liability for consequential or any other damages, suspend performance of services on the project until the Client retains appropriate specialist consultants or contractors to identify, abate and/or remove the asbestos, hazardous or toxic materials and warrant that the jobsite is in full compliance with applicable laws and regulations. In addition, the Client shall hold harmless, defend and indemnify NOVA Parties, from and against any and all Claims arising, in whole or in part, out of the discovery, presence, handling, removal or disposal of, or exposure of persons to, any hazardous materials in any form at the Project site, including, but not limited to, asbestos, asbestos products, polychlorinated biphenyl (PCB), bacteria, mold, fungi, lead based paints or other similar materials or other toxic substances, infectious materials, or contaminants.

16. SAMPLE DISPOSAL

Unless other arrangements are made, NOVA will dispose of all soil and rock samples remaining at the time of report completion. Further storage or transfer of samples can be arranged at Client's prior written request, subject to a reasonable charge by NOVA. Client acknowledges that contaminated drill cuttings, sample spoils, wash water, and other materials may be produced as a result of encountering hazardous materials at the site. In such event, NOVA shall properly contain, label, and store such materials on-site, and Client shall be responsible for its proper transportation and disposal.

17. AQUIFER CONTAMINATION

Client acknowledges that it is impossible for NOVA to know the exact composition of a site's subsurface, even after conducting a comprehensive exploratory program. As a result, there is a risk that drilling and sampling may result in contamination of certain subsurface areas. Although NOVA will take reasonable precautions in accordance with the Standard of Care to avoid such an occurrence, Client waives any claim against, and (without limiting the generality of Section 14 hereof) agrees to indemnify and hold harmless NOVA in accordance with the terms and conditions set forth in this Agreement from any claim or liability for injury or loss which may arise as a result of subsurface contamination caused by drilling, sampling, or monitoring well installation. Client also agrees to adequately compensate NOVA for any time spent and expenses incurred in defense of any such claim.

18. DEFINITIONS

As used herein, the following words and their derivative words or phrases have the meanings indicated, unless otherwise specified in the various sections of this Agreement.

AGREEMENT: means the Agreement between the parties, which shall describe and govern Client's engagement of NOVA to provide services in connection with the project or work identified in the proposal (Proposal), and consists of the Proposal, these General Terms and Conditions, and any exhibits or attachments referenced in any of these documents.

CERTIFY, CERTIFICATION: NOVA's opinion based on its observation of conditions, knowledge, information and beliefs. It is expressly understood such opinions relieve no other party of any responsibility or obligation he or she has accepted by contract or custom.

ESTIMATE: An opinion of probable cost for services made by NOVA. The accuracy of probable cost for services opinion cannot be guaranteed.

INSPECT, INSPECTION: The visual observation of certain aspects of construction to permit NOVA to render its professional opinion as to whether the contractor is performing the Work in a manner indicating that, when completed, the Work will be in general accordance with the approved documents. Such observations do not relieve any party from fulfillment of their customary and contractual responsibilities and obligations.

19. LIMITATION OF LIABILITY

It is intended by the parties to this Agreement that NOVA's services under this Agreement shall not subject NOVA's individual employees, officers, shareholders, managers, members or directors to any personal legal exposure for the risks associated with the services to be rendered on the project. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against NOVA, a Delaware limited liability company, and not against any of NOVA's employees, shareholders, officers, managers, members or directors.

20. MISCELLANEOUS

AMENDMENT: This Agreement may be amended, modified or supplemented, but only in writing signed by each of the parties hereto.

WAIVERS: The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term contained in this Agreement shall be effective unless in writing and signed by the waiving party, and no waiver in any one or more instances shall be deemed to be a continuing waiver of any such condition or breach in other instance or a waiver of any other condition or breach of any other term.

SEVERABILITY: If any provision or sub-provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions or sub-provisions contained herein shall not be affected thereby.

INTEGRATION: This Agreement represents the entire understanding and agreement among the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings and representations (if any) made by and among such parties.

SOVEREIGN IMMUNITY: In the event that the Client is a State, City, County or other municipal entity, then NOVA (and all NOVA Parties) shall for all purposes provided in this Agreement and otherwise be deemed an agent of the Client for purposes of sovereign immunity under State or local statutes and otherwise. Client shall fully cooperate, at its sole cost and expense, with NOVA and take all necessary and appropriate actions to qualify NOVA (and the NOVA Parties) for and defend its and their right of sovereign immunity as an agent of the Client for purposes of State or local law.

NOVA Employees: Client agrees not to recruit or hire any NOVA employee currently or previously working under this Agreement during the contract period or within twelve months of termination of the contract, either for themselves or any third party. In the event Client violates this clause, NOVA shall have the right of injunctive relief, and Client shall pay NOVA \$25,000 or 25% (percent) of the employee's current annual, base salary, whichever is greater, with payment being made within 15 days of NOVA's written notice to Client of said violation.

Important Information about This

Geotechnical Engineering Proposal

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

While you cannot eliminate all such risks, you can manage them. The following information is provided to help.

Participate in Development of the Subsurface Exploration Plan

Geotechnical engineering begins with the creation of an effective subsurface exploration plan. This proposal starts the process by presenting an initial plan. While that plan may consider the unique physical attributes of the site and the improvements you have in mind, it probably does not consider your unique goals, objectives, and risk management preferences. Subsurface exploration plans that are finalized without considering such factors presuppose that clients' needs are unimportant, or that all clients have the same needs. *Avoid the problems that can stem from such assumptions* by finalizing the plan and other scope elements directly with the geotechnical engineer you feel is best qualified for the project, along with the other project professionals whose plans are affected by the geotechnical engineer's findings and recommendations. If you have been told that this step is unnecessary; that client preferences do not influence the scope of geotechnical engineering service or that someone else can articulate your needs as well as you, you have been told wrong. No one else can discuss your geotechnical options better than an experienced geotechnical engineer, and no one else can provide the input you can. Thus, while you certainly are at liberty to accept a proposed scope "as is," recognize that it could be a unilateral scope developed without direct client/engineer discussion; that authorizing a unilateral scope will force the geotechnical engineer to accept all assumptions it contains; that assumptions create risk. *Manage your risk. Get involved.*

Expect the Unexpected

The nature of geotechnical engineering is such that planning needs to *anticipate the unexpected*. During the design phase of a project, more or deeper borings may be required, additional tests may become necessary, or someone associated with your organization may request a service that was not included in the final scope. During the construction phase, additional services may be needed to respond quickly to unanticipated conditions. In the past, geotechnical engineers commonly did whatever was required to oblige their clients' representatives and safeguard their clients' interests, taking it on faith that their clients wanted them to do so. But some, evidently, did not, and refused to pay for legitimate extras on the ground that the engineer proceeded without proper authorization, or failed to submit notice in a timely manner, or failed to provide proper documentation. *What are your preferences? Who is permitted to authorize additional geotechnical services on your project? What type of documentation do you require? To whom should it be sent? When? How?* By addressing these and similar issues sooner rather than later, you and your geotechnical engineer will be prepared for the unexpected, to help prevent molehills from growing into mountains.

Have Realistic Expectations; Apply Appropriate Preventives

The recommendations included in a geotechnical engineering report are *not final*, because they are based on opinions that can be verified only during construction. For that reason, most geotechnical engineering proposals offer the construction observation services that permit the geotechnical engineer of record to confirm that subsurface conditions are what they were expected to be, or to modify recommendations when actual conditions were not anticipated. *An offer to provide construction observation*

is an offer to better manage your risk. Clients who do not take advantage of such an offer; clients who retain a second firm to observe construction, can create a high-risk “Catch-22” situation for themselves. *The geotechnical engineer of record cannot assume responsibility or liability for a report’s recommendations when another firm performs the services needed to evaluate the recommendations’ adequacy.* The second firm is also likely to disavow liability for the recommendations, because of the substantial and possibly uninsurable risk of assuming responsibility for services it did not perform. Recognize, too, that no firm other than the geotechnical engineer of record can possibly have as intimate an understanding of your project’s geotechnical issues. As such, reliance on a second firm to perform construction observation can elevate risk still more, because its personnel may not have the wherewithal to recognize subtle, but sometimes critically important unanticipated conditions, or to respond to them in a manner consistent with your goals, objectives, and risk management preferences.

Realize That Geoenvironmental Issues Have Not Been Covered

The equipment, techniques, and personnel used to perform a geoenvironmental study differ significantly from those used to perform a geotechnical study. *Geoenvironmental services are not being offered in this proposal. The report that results will not relate any geoenvironmental findings, conclusions, or recommendations.* Unanticipated environmental problems have led to numerous project failures. If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. *Do not rely on an environmental report prepared for someone else.*

Obtain Professional Assistance To Deal with Mold

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the express purpose of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, a number of mold prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may be addressed as part of the geotechnical engineering study described in this proposal, the geotechnical engineer who would lead this project ***is not*** a mold prevention consultant; ***none of the services being offered have been designed or proposed for the purpose of mold prevention.***

Have the Geotechnical Engineer Work with Other Design Professionals and Constructors

Other design team members’ misinterpretation of a geotechnical engineering report has resulted in costly problems. Manage that risk by having your geotechnical engineer confer with appropriate members of the design team before finalizing the scope of geotechnical service (as suggested above), and, again, after submitting the report. *Also retain your geotechnical engineer to review pertinent elements of the design team members’ plans and specifications.*

Reduce the risk of unanticipated conditions claims that can occur when constructors misinterpret or misunderstand the purposes of a geotechnical engineering report. Use appropriate language in your contract documents. Retain your geotechnical engineer to participate in prebid and preconstruction conferences, and to perform construction observation.

Read Responsibility Provisions Closely

Clients, design professionals, and constructors who do not recognize that geotechnical engineering is far less exact than other engineering disciplines can develop unrealistic expectations. Unrealistic expectations can lead to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their proposals. Sometimes labeled “limitations,” many of these provisions indicate where geotechnical engineers’ responsibilities begin and end, to help others recognize their own responsibilities and risks, thus to encourage more effective scopes of service. *Read this proposal’s provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

Rely on Your Geotechnical Engineer for Additional Assistance

Membership in the Geoprofessional Business Association (GBA) exposes geotechnical engineers to a wide array of risk management techniques that can be of genuine benefit to everyone involved with a construction project. Confer with a GBA-member geotechnical engineer for more information. Confirm a firm’s membership in GBA by contacting GBA directly or at its website.



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EXHIBIT C - WORK AUTHORIZATION

City of Canton agrees with the above scope. **BCC Engineering, LLC, d/b/a/ Heath & Lineback** is hereby authorized to proceed.

City of Canton

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

Print: _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____