



# Huntsville, Alabama

305 Fountain Circle  
Huntsville, AL 35801

## Cover Memo

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**Meeting Type:** City Council Regular Meeting **Meeting Date:** 10/24/2024

**File ID:** TMP-4724

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**Department:** General Services

**Subject:**

**Type of Action:** Approval/Action

Resolution authorizing the Mayor to enter into a Standard Agreement between the City of Huntsville and PEC Structural Engineering, Inc. for Electrical Services for the Goldsmith-Schiffman Park Development.

Resolution No.

**Finance Information:**

**Account Number:** 3020-14-00000-520010-00000000

**City Cost Amount:** \$44,600.00

**Total Cost:** \$44,600.00

**Special Circumstances:**

**Grant Funded:** NONE

**Grant Title - CFDA or granting Agency:** N/A

**Resolution #:** N/A

**Location: (list below)**

**Address:** 320 Beirne Avenue

**District:** District 1 ☐ District 2 ☒ District 3 ☐ District 4 ☐ District 5 ☐

**Additional Comments:**

Engineering services will include the design of the Goldsmith Schiffman Park to include partial demolition of the existing wall, a new restroom pavilion, an open-air pavilion, and a concession building. This contract is for 730 Days.



**RESOLUTION NO. 24-\_\_\_\_\_**

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into a Standard Agreement between the City of Huntsville and PEC Structural Engineering, Inc., for engineering services for the Goldsmith-Schiffman Park Development, Huntsville, Alabama in the amount of Forty-Four Thousand Six Hundred Dollars and 00/100s (\$44,600.00) plus Five Thousand Dollars and 00/100s (\$5,000.00) reimbursables on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to the certain document attached hereto and identified as “Standard Agreement between the City of Huntsville and PEC Structural Engineering, Inc.” consisting of a total of twenty (20) pages together with the signature of the City Council President and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

**ADOPTED** this the 24th day of October, 2024.

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President of the City Council of  
the City of Huntsville, Alabama

**APPROVED** this the 24th day of October, 2024.

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Mayor of the City of Huntsville,  
Alabama

**STANDARD AGREEMENT  
BETWEEN  
CITY OF HUNTSVILLE  
AND  
PEC STRUCTURAL ENGINEERING**



This Agreement is made by and between  
the City of Huntsville, Alabama, a  
Municipal Corporation by:

**City of Huntsville  
308 Fountain Circle  
Huntsville, Alabama 35801**

(hereinafter referred to as the "Owner") and:

**PEC Structural Engineering  
3005 L&N Drive  
Suite 3  
Huntsville, Alabama 35801**

(hereinafter referred to as the "Engineer") under seal for services described below to be rendered for the following Project:

**Project Title: Goldsmith-Schiffman Park Development**

**General Project Description:** Engineering services will include the design of the Goldsmith Schiffman Park to include partial demolition of the existing wall, a new restroom pavilion, an open-air pavilion, and a concession building. This contract is for 730 Days.

This Agreement shall be effective on the date it is executed by the last party to execute it. The Owner and the Engineer hereby agree as follows:

Date: October 24, 2024

President of the City Council: \_\_\_\_\_



# ARTICLE I

## THE ENGINEER'S BASIC DUTIES TO THE OWNER

**1.1** By executing this Agreement, the Engineer represents to the Owner that the Engineer is professional qualified to act as the Engineer for the project and is licensed to practice Engineering by all public entities having jurisdiction over the Engineer and the Project. The Engineer further represents to the Owner that the Engineer will maintain all necessary licenses, permits or other authorizations necessary to act as Engineer for the Project until Engineer's remaining duties hereunder have been satisfied. The Engineer assumes full responsibility to the Owner for the negligent acts, errors and omissions of its consultants or others employed or retained by the Engineer in connection with the Project. In accordance with Alabama Act 2021-318 (d)(1) all design professionals performing services for this Project shall perform the services with the professional skill and care ordinarily provided by a competent design professional practicing under the same or similar circumstances and professional licenses as expeditiously as is prudent considering the ordinary professional skill and care of a competent design professional.

**1.2** Execution of this Agreement by the Engineer constitutes a representation that the Engineer has become familiar with the Project site and the local conditions under which the Project is to be implemented.

### **1.3 PERIOD OF PERFORMANCE**

**1.3.1** The Engineer shall commence services pursuant to this agreement as of **October 24, 2024**. The final completion date for the completion of the Project shall be approximately **730 Days after the Notice to Proceed**.

### **1.4 SCHEMATIC DESIGN**

**1.4.1** The Engineer shall review and examine the information, including any desired schedule and budgetary requirements, furnished by the Owner to understand the requirements of the Project and shall review the understanding of such requirement with the Owner.

**1.4.2** The Engineer shall furnish to the Owner a preliminary written evaluation of such information in light of any Project budget requirements.

**1.4.3** The Engineer shall review and discuss with the Owner any alternative approaches to design and construction of the Project.

**1.4.4** The Engineer shall prepare and submit to the Owner for review schematic design documents consisting of drawings and other documents illustrating the scale and relationship of proposed Project components.

**1.4.5** The Engineer shall submit to the owner an estimate of probable construction costs based upon current area, volume, other unit costs or other information.

**1.4.6** The Engineer shall submit provide services to examine or investigate existing conditions or to make measured drawings, or to verify the accuracy of drawings or other information provided by the Owner for the renovation project.

### **1.5 DESIGN DEVELOPMENT**

**1.5.1** Based on the schematic design documents and any adjustments authorized by the Owner in its program, desired schedule or Project budget, the Engineer shall prepare and submit to the Owner for review, design development documents consisting of drawings and other documents to fix and describe the size and character of the project as to Engineering, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

**1.5.2** The Engineer shall review its estimate of probable construction costs, shall make any appropriate revisions thereto and furnish same to the Owner.

### **1.6 CONSTRUCTION DOCUMENTS, BIDDING & NEGOTIATIONS**

#### **1.6.1 Construction Documents**

1.6.1.1 Upon the Owner's authorization, the Engineer shall prepare Construction Documents consisting of drawings and specifications setting forth in detail the requirements for construction of the Project. Such Construction Documents shall be reasonably accurate, coordinated and adequate for the construction and shall be in conformity and comply with applicable laws, codes and regulations. Products specified for use shall be readily available unless written authorization to the contrary is given by the Owner.

1.6.1.2 The Engineer shall review its most recent estimate of probable construction costs, shall make any appropriate revisions thereto and furnish same to the Owner.

## **1.6.2 Bidding & Negotiating**

1.6.2.1 The Engineer will work with the construction Projects Management Department to develop and provide the following information for review and approval to the City of Huntsville Procurement Services Division for concurrence. The preparation of the Advertisement for Bids will serve as the official notice to proceed with the bidding process.

- A. Name and Address of Project
- B. Name of Engineering Firm and Engineer and Construction Manager when applicable.
- C. Date Contract Documents and Plans to be released, where to pick them up, cost per set, and if applicable will any sets be refunded partially or in full.
- D. Proposed date, time, and location for Pre-bid Conference and Bid Opening.
- E. Schedule and placement of advertising.
- F. The proposed bidding documents including specifications and a complete set of plans for review for compliance with applicable policies and laws.

1.6.2.2 The Engineer shall provide Construction Projects Management Division two complete sets of specifications and drawings.

1.6.2.3 The Engineer will conduct any required Pre-Bid Conference. The Engineer will be responsible for the preparation and distribution of any required addenda.

1.6.2.4 The Engineer will participate in the public bid opening. Representatives from Construction Projects Management Division and Procurement Services shall be in attendance at the bid opening as well as all negotiations following the bid opening. The results of any such negotiation shall become a part of the contract document.

## **1.7 ADMINISTRATION OF CONSTRUCTION**

1.7.1 The Engineer shall provide administration of the Construction Contract as set forth below and shall perform those duties and discharge those responsibilities set forth herein.

1.7.2 The Engineer shall represent the Owner during construction. Instructions and other appropriate communications from the Owner to the contractor shall be communicated through the Engineer. The Engineer shall act on behalf of the Owner only to the extent provided herein.

1.7.3 Upon receipt, the Engineer shall carefully review and examine the Contractor's Schedule of Values, together with any supporting documentation or data which the Owner or the Engineer may require from the Contractor. The purpose of such review and examination will be to protect the Owner from an unbalanced Schedule of Values which allocates greater value to certain elements of the Work than is indicated by such supporting documentation or data or, than is reasonable under the circumstances. If the Schedule of Values is not found to be appropriate, or if the supporting documentation or data is deemed to be inadequate, and unless the Owner directs the Engineer to the contrary in writing, the Schedule of Values shall be returned to the Contractor for revision or supporting documentation or data. After making such examination, if the Schedule of Values is found to be appropriate as submitted, or if necessary, as revised, the Engineer shall sign the Schedule of Values thereby indicating the Engineer's informed belief that the schedule of

Values constitutes a reasonable, balanced basis for payment of the Contract Price to the Contractor. The Engineer shall not sign such Schedule of Values in the absence of such belief unless directed to do so, in writing, by the Owner.

1.7.4 The Engineer shall carefully examine the Work of the Contractor whenever and wherever appropriate. The purpose of such examinations will be to determine the quality, quantity and progress of the Work in comparison with the requirements of the Construction Contract. In making such examinations, the Engineer shall exercise care to protect the Owner from defects or deficiencies in the Work, from unexcused delays in the schedule and from overpayment to the Construction Contract. Following each such examination the Engineer shall submit a written field observation report of such examination, together with any appropriate comments or recommendations, to the Owner.

1.7.5 The Engineer shall at all times have access to the Work wherever it is located. The Engineer shall not have control or charge of construction means, methods, techniques, sequences or procedures, or safety precautions or programs in connection with the Work.

1.7.6 The Engineer shall determine amounts owed to the Contractor based upon examinations of the Work as required in Subparagraph 1.7.4, evaluations of the Contractor's rate of progress in light of the remaining Contract Time and upon evaluations of the Contractor's Request for Payment, and shall approve, modify or deny the request for payment and report to the Owner within ten (10) days of receipt of the request from the contractor.

1.7.7 The approval of a Request for Payment shall constitute a representation by the Engineer to the Owner that the Engineer has made an examination of the Work as provided in Subparagraph 1.7.4 and, that the Work has progressed to the level indicated, that the quality of the Work meets or exceeds the requirements of the Construction Contract, and that, the Contractor is entitled to payment of the amount certified.

1.7.8 The Engineer shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor. The Engineer shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

1.7.9 The Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of the Construction Contract.

1.7.10 The Engineer shall reject Work which does not conform to the Contract Documents unless directed by the Owner, in writing, not to do so. Whenever, in the Engineer's opinion, it is necessary or advisable, the Engineer shall require special examination or testing of the Work in accordance with the provisions of the Construction Contract whether or not such Work is fabricated, installed or completed.

1.7.11 The Engineer shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples. Approval by the Engineer of the Contractor's submittal shall constitute the Engineer's representation to the Owner that such submittal is generally in conformance with the design concept and information given through the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay to the Contractor or the Project. Owner should receive a copy of all approved shop drawings, product data, samples, etc.

1.7.12 The Engineer shall review, and advise the Owner concerning, proposals and requests for Change Orders from the Contractor. The Engineer shall prepare Change Orders for the Owner's approval and execution in accordance with the Construction Contract, and shall have authority to order, by Field Order, minor changes in the Work not involving an adjustment in the Contract Price or an extension of the Contract Time.

1.7.13 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Engineer a list of items to be completed or corrected. When the Engineer, on the basis of an inspection, determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the owner and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate. Upon Substantial Completion of the Work, and execution by both the Owner and the Contractor of the Certificate of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%)

of the Contract Price less three hundred percent (300%) of the reasonable costs as determined by the Owner and the Engineer for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims.

1.7.14 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in full accordance with the Construction Contract and the Construction Contract has been fully performed, the Engineer will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to the Construction Contract. If the Engineer is unable to issue its final Certificate of Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection (s) which cost may be deducted by the Owner from the Contractor's final payment.

1.7.15 The Engineer shall, without additional compensation, promptly correct any errors, omissions, deficiencies or conflicts in the Engineers work product.

1.7.16 The Engineer shall indemnify and hold harmless the Owner, its officers, agents, and employees, from and against all liability, claims, damages, loss, costs and expenses arising out of, or resulting from, Engineer's negligent acts, errors, or omissions in the performance of the Engineer's professional services under this agreement. In the event the Owner is alleged to be liable on account of alleged negligent acts, errors or omissions of the Engineer, the Engineer shall defend such allegations and shall bear all costs, fees and expenses of such defense.

## **1.8 ADDITIONAL SERVICES**

The following services of the Engineer are not included in Paragraphs 1.3 through 1.6. Nevertheless, the Engineer shall provide such services if authorized in writing by the Owner, and they shall be paid for by the Owner as provided hereinafter.

1.8.1 Making revision in drawings, specifications or other documents when such revisions are inconsistent with written direction by the Owner previously given, are required by the enactment of revision of codes, laws or regulations subsequent to the preparation of such documents and not reasonably anticipated, or are due to other causes not within the control or responsibility of the Engineer, either in whole or in part.

1.8.2 Preparing drawings, specifications and supporting data in connection with Change Orders, provided that such Change Orders are issued by the Owner due to causes not within the control or responsibility of the Engineer, either in whole or in part.

1.8.4 Providing additional services for repair or replacement of Work damaged by fire or other cause during construction provided that such services are required by causes not the responsibility of the Engineer, either in whole or in part.

1.8.5 Providing services made necessary solely by the default of the Contractor or major defects or deficiencies in the Work of the Contractor.

## **1.9 SERVICE SCHEDULE**

1.9.1 The Engineer shall perform its services expeditiously. Upon request by the Owner, the Engineer shall submit for the Owner's approval a schedule for the performance for the Engineer's services which shall include allowance for time required for the Owner's review of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the Owner, shall not, except for cause, be exceeded by the Engineer.

## **1.10 PERSONNEL**

1.10.1 The Engineer shall assign only qualified personnel to perform any service concerning the project. At the time of execution of this Agreement, the parties anticipate that the following named individuals will perform those functions indicated:

**NAME**  
**Jonathan Bullard**

**FUNCTION**  
**Senior Project Manager**

So long as the individuals named above remain actively employed or retained by the Engineer, they shall perform the functions indicated next to their names. Newly hired employees by the Engineer after the execution of this contract shall be declared to the Owner in writing and classed in a manner similar to existing employees, and subject to all of the terms of this Agreement.

1.10.2 The Owner shall designate representatives who are authorized to make all decisions except for change orders on the Owner's behalf when requested to do so by the Engineer. The following designated Owner representative(s) are authorized to make such decisions and shall be available on any on-call basis and shall be called in the order listed herein:

<b>Name</b>	<b>Work Telephone</b>	<b>Cell Telephone</b>
<b><u>Natasha Wright</u></b>	<b><u>(256) 705-3098</u></b>	

The Owner shall furnish a revised listing to the Engineer when any changes affecting this list.

## ARTICLE II

### THE OWNER'S BASIC DUTIES TO THE ENGINEER OTHER THAN COMPENSATION

**2.1** The Owner shall provide the Engineer with adequate information regarding the Owner's requirements for the Project including any desired or required design or construction schedule, or both, and any budgetary requirements.

**2.2** The Owner shall review any documents submitted by the Engineer requiring the Owner's decision, and shall render any required decision pertaining thereto.

**2.3** The Owner shall furnish a legal description and any necessary survey of the site, including as may be reasonably required, grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining the existing buildings and other improvements; and information concerning available service utility lines above and below grade, including inverts and depths.

**2.4** The Owner shall furnish the services of Geotechnical and other consultants when such services are necessary and are requested by the Engineer.

**2.5** The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.

**2.6** If the Owner becomes aware of any fault or defect in the Project, nonconformance with the Construction Contract, or of any errors, omissions or inconsistencies in the drawings or specifications, prompt notice thereof shall be given by the Owner to the Engineer.

**2.7** The Owner shall perform those duties set forth in Paragraphs 2.1 through 2.6 as expeditiously as may reasonably be necessary for the orderly progress of the Engineer's services and of the Work.

**2.8** The Owner's review of any documents prepared by the Engineer or its consultants shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's construction program and intent. No review of such documents shall relieve the Engineer of its responsibility for the accuracy, adequacy, fitness, suitability and coordination of its work product.

## ARTICLE III CONSTRUCTION COSTS

**3.1** If a fixed limitation on the cost of Construction is exceeded by the lowest bona fide bid or negotiated proposal, the Owner may (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or renegotiating of the Project, (3) terminate the Project and this Agreement in accordance herewith, or (4) cooperate in revising the Project scope or quality, or both, as required to reduce the construction costs. In the case of (4) the Engineer, without additional charge to the Owner, shall consult with the Owner and shall revise and modify the drawings and specifications as necessary to achieve compliance with the fixed limitations on construction cost. Absent clear and convincing negligence on the part of the Engineer in making its estimates of probable construction cost, providing such modifications and revisions shall be the limit of the Engineer's responsibility arising from the establishment of such fixed limitation of construction costs, and having done so, the Engineer shall be entitled to compensation for all other services performed, in accordance with the Agreement.

## ARTICLE IV BASIS OF COMPENSATION

**4.1** The Owner shall compensate the Engineer for services rendered pursuant to Paragraphs 1.3 through 1.6 of this Agreement by payment of the not- to- exceed amount of **Forty-Four Thousand Six Hundred Dollars and NO/100s (\$44,600.00)** with a reimbursable amount of **Five Thousand Dollars and NO/100s (\$5,000.00)**. This includes the cost of addenda related to the bidding of this project.

**4.2** Payment to the Engineer of the sum set forth in Paragraph 4.1 shall be allocated as follows:

Schematic Design:	10%
Design Development:	10%
Construction Documents:	45%
Bidding:	5%
Construction Administration:	30%

Additional services of the Engineer as described in Paragraph 1.8, if any, shall be compensated as follows:  
Compensation for such services shall be computed on an hourly basis in accordance with Exhibit "A" attached herewith.  
Additional Services of consultants, if any, shall be compensated on the basis of multiple of one point two (1.2) times the amounts billed to the Engineer for such service.

**4.4** Reimbursable Expenses as defined in Article V, shall be reimbursed to the Engineer by the Owner as provided in Article V.

**4.5** If the Engineer's services are changed materially through no fault of the Engineer, compensation due to the Engineer shall be equitably adjusted, either upward or downward.

## ARTICLE V PAYMENT TO THE ENGINEER

### **5.1 ENGINEER'S INVOICES**

**5.1.1** Not more frequently than monthly, unless otherwise agreed in writing by the Engineer and the Owner, the Engineer shall submit an invoice to the Owner requesting payment for services properly rendered and reimbursement for Reimbursable Expenses due hereunder. The Engineer's invoice shall describe with reasonable particularity each service rendered, the date thereof, the time expended if services under Paragraphs 1.7 or 4.5 are included in the invoice and the

person(s) rendering such service. The Engineer's invoice shall be accompanied by such documentation or data in support of Reimbursable Expenses for which reimbursement is sought as the Owner may require.

5.1.2 If payment is requested for services rendered by the Engineer pursuant to Paragraphs 1.3 through 1.6, the invoice shall additionally reflect the allocations as provided in Paragraph 4.2 and shall state the percentage of completion as to each such allocation. The invoice shall bear the signature of the Engineer, which signature shall constitute the Engineer's representation to the Owner that the services indicated in the invoice have progressed to the level indicated, have been properly and timely performed as required herein that the Reimbursable Expenses included in the invoice have been reasonably incurred, that all obligations of the Engineer covered by prior invoices have been paid in full, and that, to the best of the Engineer's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to the Engineer the payment of any portion thereof should be withheld. Submission of the Engineer's invoice for final payment and reimbursement shall further constitute the Engineer's representation to the Owner that, upon receipt from the Owner of the amount invoiced, all obligations of the Engineer to others, including its consultants, incurred in connection with the Project, will be paid in full.

## **5.2 TIME FOR PAYMENT**

5.2.1 The Owner shall make payment to the Engineer of all sums properly invoiced as provided in Paragraph 5.1, within thirty (30) days of the Owner's receipt thereof.

## **5.3 OWNER'S RIGHT TO WITHHOLD PAYMENT**

5.3.1 In the event the Owner becomes credibly informed that any representations of the Engineer, provided pursuant to Subparagraph 5.1.2, are wholly or partially inaccurate, the Owner may withhold payment of sums then or in the future otherwise due to the Engineer until the inaccuracy, and the cause thereof, is corrected to the Owner's reasonable satisfaction.

## **5.4 REIMBURSABLE EXPENSES**

5.4.1 Reasonable expenses for the project will may include expenses for ADEM Permit and Monitoring for the duration of the project and anything related to the ADEM process if a part of the proposal.

## **5.5 ENGINEER'S RECORDS**

5.5.1 Documentation accurately reflecting the time expended by the Engineer and his personnel and records of Reimbursable Expenses shall be maintained by the Engineer and shall be available to the Owner for review and copying upon request.

# **ARTICLE VI TERMINATION**

## **6.1 TERMINATION FOR CAUSE**

6.1.1 This Agreement may be terminated by either party upon seven (7) days written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination.

## **6.2 TERMINATION BY THE OWNER WITHOUT CAUSE**

6.2.1 This Agreement may be terminated by the Owner without cause upon seven (7) days' written notice to the Engineer. In the event of such a termination without cause, the Engineer shall be compensated for all services performed prior to termination, together with Reimbursable Expenses incurred. In such event, the Engineer shall promptly submit to the Owner its invoice for final payment and reimbursement which invoice shall comply with the provisions of Paragraph 5.1.

## **ARTICLE VII MISCELLANEOUS PROVISIONS**

### **7.1 GOVERNING LAW**

7.1.1 This Agreement shall be governed by the law of the State of Alabama.

### **7.2 INTENT AND INTERPRETATION**

7.2.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to product the intended result shall be provided by the Engineer.

7.2.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

7.2.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the Engineering industry; and third, if there is no generally accepted meaning in the Engineering industry, according to its common and customary usage.

7.2.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

7.2.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

7.2.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

### **7.3 TIME IS OF THE ESSENCE**

7.3.1 Time limitations contained herein, or provided for hereby, are of the essence of this Agreement.

### **7.4 USE AND OWNERSHIP OF DOCUMENTS**

7.4.1 The drawings, specifications and other documents or things prepared by the Engineer for the Project shall become and be the sole property of the Owner. The Engineer shall be permitted to retain copies thereof for its records and for its future professional endeavors. Such drawings, specifications and other documents or things are not intended by the Engineer for use on other projects by the Owner or others. Any reuse by the Owner without the written approval of the Engineer, shall be at the sole risk of the Owner and the Owner shall indemnify and save harmless the Engineer from any and all liability, costs, claims, damages, losses and expenses including attorney's fees arising out of, or resulting from, such reuse by the Owner; provided however, that this agreement to indemnify and save harmless shall not apply to any reuse of documents retained by, or through, the Contractor.

### **7.5 SUCCESSORS AND ASSIGNS**

7.5.1 The Engineer shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the Owner. Subject to the provisions of the immediately preceding sentence, the Owner and the Engineer, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

### **7.6 NO THIRD-PARTY BENEFICIARIES**

7.6.1 Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.



## **7.7 INSURANCE**

The Engineer shall carry insurance of the following kinds and amounts in addition to any other forms of insurance or bonds required under the terms of the contract specifications. The Engineer shall procure and maintain for the duration of the job until final acceptance by the Owner, or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Engineer, his agents, representatives, employees or subcontractors.

### **A. MINIMUM SCOPE OF INSURANCE:**

#### **1. General Liability:**

Insurance will be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the Owner's approval. General Liability Coverage and Owners Contractors Protective Insurance should be written by the same insurance company.

#### **Commercial General Liability**

Products and Completed Operations  
Contractual  
Personal Injury  
Explosion, Collapse and Underground  
Broad Form Property Damage

#### **2. Professional Liability:**

Insurance may be written on a "claims-made" basis, providing coverage for negligent acts, errors or omissions in the performance of professional services. Coverage will be maintained for three years after completion of the professional services and Certificates of Insurance will be submitted to the Owner within reasonable economic terms. Coverage shall be no less comprehensive than that which is carried by at least 25% of the registered Engineers or Engineering Firms contracting in the United States. Such coverage shall be carried on a continuous basis including prior acts coverage to cover the subject project. The professional liability insurance shall contain contractual liability coverage.

#### **3. Automobile Liability:**

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms.

#### **4. Workers' Compensation Insurance:**

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations.

#### **5. Employers Liability Insurance:**

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

### **B. MINIMUM LIMITS OF INSURANCE:**

#### **1. General Liability:**

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

\$ 2,000,000 General Aggregate Limit  
\$ 2,000,000 Products - Completed Operations Aggregate  
\$ 2,000,000 Personal & Advertising Injury  
\$ 2,000,000 Each Occurrence

**2. Professional Liability:**

Insurance may be made on a "claims-made" basis:

\$ 100,000 Per Claim - Land Surveyors  
\$ 250,000 Per Claim - Other Professionals

**3. Automobile Liability:**

\$ 500,000 Combined Single Limit per accident for bodily injury and property damage.

**4. Workers' Compensation:**

As Required by the State of Alabama Statute

**5. Employers Liability:**

\$ 100,000 Bodily Injury by Accident or Disease  
\$ 500,000 Policy Limit by Disease

**C. OTHER INSURANCE PROVISIONS:**

The City is hereby authorized to adjust the requirements set forth in this document in the event it is determined that such adjustment is in the City's best interest. If the insurance requirements are not adjusted by the City prior to the City's release of specifications with regard to the project in question, then the minimum limits shall apply.

The policies are to contain, or be endorsed to contain, the following provisions:

**1. General Liability and Automobile Liability Coverage's Only:**

- a. The City, its elected and appointed officials, employees, agents and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of Engineer for products used by and completed operations of Engineer; or automobiles owned, leased, hired or borrowed by Engineer. Additional insured status shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent that is sufficient to provide the coverage required by this Agreement.
- b. Engineer's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, employees, agents and specified volunteers, as their interests may appear. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or specified volunteers shall be excess of Engineer's insurance and shall not contribute to it.
- c. Engineer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**2. All Coverages:**

- a. Engineer is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Cancellation of coverage

for non-payment of premium will require ten (10) days written notice to the City.

- b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents or specified volunteers.

**D. ACCEPTABILITY OF INSURERS:**

Insurance is to be placed with insurers with an A. M. Best's rating of no less than A-V.

**E. VERIFICATION OF COVERAGE:**

The Owner shall be indicated as a Certificate Holder and the Engineer shall furnish the Owner with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the Owner before work commences. The Owner reserves the right to require complete, certified copies of all required insurance policies at any time.

**F. CONSULTANTS AND/OR SUBCONTRACTORS WORKING FOR THE ENGINEER:**

The Engineer shall include all subcontractors and/or consultants as insureds under its policies or shall furnish separate certificates and/or endorsements for each subcontractor and/or consultant.

**G. HOLD HARMLESS AGREEMENT:**

**1. Other Than Professional Liability Exposures:**

The Engineer, to the fullest extent permitted by law, shall indemnify and hold harmless the Owner, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, and (2) is caused by any negligent act or omission of the Engineer or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

**2. Professional Liability:**

The Engineer shall indemnify and hold harmless the Owner, its officers, agents, employees, and specified volunteers from and against any and all claims, demands, losses and expenses including, but not limited to attorney's fees, liability, or consequential damages of any kind or nature resulting from any negligent acts, errors, or omissions of the Engineer or any subconsultants employed by them or anyone employed by them or anyone for whose acts they are legally liable in the performance of the professional services under this agreement.

## ARTICLE VIII OTHER CONDITIONS OR SERVICES

8.1 N/A

**8.2 ENTIRE AGREEMENT**

8.2.1 This Agreement represents the entire agreement between the Owner and the Engineer and supersedes all prior communications, negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both Owner and Engineer.

**ENGINEER**

**SEAL**

**Johnathan Powell**

**By:**

\_\_\_\_\_  
**(SIGNATURE)**

**PEC Structural Engineering, Inc.  
3005 L&N Drive  
Suite 3  
Huntsville, AL 35801**

\_\_\_\_\_  
**(DATE OF EXECUTION)**

**OWNER**

**SEAL**

**Tommy Battle**

**By:**

\_\_\_\_\_  
**(SIGNATURE)**

**Tommy Battle, Mayor  
City of Huntsville  
305 Fountain Circle  
Huntsville, AL 35801**

**October 24, 2024**

\_\_\_\_\_  
**(DATE OF EXECUTION)**

The parties agree that any form of electronic signature, including but not limited to signatures via facsimile, scanning, or electronic mail, may substitute for the original signature and shall have the same legal effect as the original signature.



3005 L & N Drive, Suite 3  
Huntsville, AL 35801

(256)533-3042  
mail@PECstructural.com

October 4, 2024

General Services  
City of Huntsville

## EXHIBIT A

ATTN: Mr. Chris O'Neil

Phone Number: 256-427-5285

Email: chris.oneil@huntsvilleal.gov

**REF: PROPOSAL FOR CONSULTING STRUCTURAL ENGINEERING SERVICES  
GOLDSMITH-SCHIFFMAN PARK (HUNTSVILLE, AL)  
PEC PROJECT NUMBER: 24-176**

Dear Chris:

PEC Structural Engineering, Inc. is pleased to submit this proposal for the structural engineering services associated with the above referenced project. Services provided by PEC Structural Engineering, Inc. ("PEC") to General Services City of Huntsville ("Client") shall be provided in accordance with the Scope of Services, Clarifications, and Commercial Terms included herein.

### GENERAL PROJECT DESCRIPTION:

You are proposing to design a new plan for the Goldsmith-Schiffman Park in Huntsville, AL. The proposed plan shall include partial demolition of the existing wall, a new restroom pavilion, an open air pavilion, and a concession building. Foresite shall be the design professional of record for the civil, landscaping, and irrigation. PEC's proposal was based on the preliminary concept plan issued by Foresite.

### SCOPE OF SERVICES:

1. Coordinate project scope with Architect.
2. Perform a code review to determine minimum design loads for structural framing.
3. Develop foundation and framing drawings for the restroom pavilion. (Approx. 26 ft x 55 ft)
4. Develop foundation and framing drawings for the open air pavilion. (Timber design. Similar to PEC's previous design for City of Huntsville.)



5. Develop foundation and framing drawings for the concession/restroom building. (New building at corner of park.)
6. Investigate existing stone/brick wall around park perimeter. Develop foundation and framing drawings for wall stabilization and/or reinforcement.
7. Review structural shop drawings.
8. Assist Client with cost estimates. Cost estimates performed by PEC are based solely upon overall construction costs. PEC bases their estimates on past experience and general rules of thumb. PEC shall not be held liable for discrepancies or errors in cost estimates. PEC provides no guarantee of the accuracy of their estimates.
9. Attend a maximum of 6 (six) design review meetings during the design of this project. PEC personnel shall attend additional meetings as requested by Client. Attendance at additional meetings shall be treated as an "Add" to the project. PEC shall bill for these additional services on a Time-and-Materials basis in accordance with PEC's standard hourly rates.
10. Attend a maximum of 6 (six) OAC meetings during the construction of this project. PEC personnel shall attend additional meetings as requested by Client. Attendance at additional meetings shall be treated as an "Add" to the project. PEC shall bill for these additional services on a Time-and-Materials basis in accordance with PEC's standard hourly rates.
11. Perform a maximum of 5 (five) site visits during construction. If requested by the Client, PEC shall perform additional site visits during construction. Additional site visits, and expenses associated with developing job observation reports for each visit, shall be an "Add" to the scope of services. PEC shall invoice for these additional services on a Time-and-Materials basis in accordance with PEC's standard hourly and reimbursement rates. Site visits are billed "portal-to-portal". Time associated with each site visit includes the time required to develop a written Job Observation Report.

#### CLARIFICATIONS:

1. All CAD drawings will be developed in AutoCAD LT or Revit per PEC format and standards.
2. If the project is drafted in AutoCAD, the Client shall provide PEC with electronic CAD files of the building floor plans and elevations.
3. If the project is drafted in Revit, Client shall provide PEC with a Revit model with building floor plans, elevations, and a pre-defined origin point. This origin point shall not be relocated during the design phase of the project.
4. If the project is drafted in Revit, Client shall not upgrade their Revit software version at any time during the project. For example, if Client begins the project in Revit 2022, Client shall not upgrade to Revit 2024 during the project. (Revit software is not backwards compatible.) If Client upgrades to a later version of Revit during the project, Client shall be responsible for



reimbursing PEC for drafting and engineering time required to upgrade the structural model and drawings. The additional drafting and engineering time shall be an "Add" to the project. PEC shall bill for these additional services on a Time-and-Materials basis in accordance with PEC's standard hourly rates.

5. The signed and sealed permit documents shall remain the basis of the construction contract. The presence of a computer-generated model does not supersede the contract documents, it does not negate the diagrammatic nature of the plans, and it does not absolve the contractor of their requirement to coordinate between trades and to coordinate with actual field conditions.
6. Structural model will be developed to level of detail 300 as defined by AIA. Model will show the size, shape, location, and orientation of structural foundations, slabs and framing elements.
7. The Client shall coordinate proposed building framing and (frame) column locations with a metal building supplier prior to PEC designing the foundations. The metal building supplier shall provide PEC with preliminary frame reactions and anchor bolt plan that may be used to design the foundations.
8. Once the structural design is 80% complete, the Client shall not revise the floor plan or building elevations. Once the structural design is 80% complete, any Client requested changes to the floor plans or building elevations shall be treated as an "Add" to the project. PEC shall bill for these additional services on a Time-and-Materials basis in accordance with PEC's standard hourly rates.

*Note that drawing development lags behind the structural design. For example, when the structural design is 80% complete, the drawings and/or project specifications may only be 50%. The additional services previously discussed apply to changes made after the structural design is 80% complete.*

9. Once the structural drawings have been issued for permitting, any structural redesign required due to changes to the floor plans, building elevations, sections, or details shall be treated as an "Add" to the project. PEC shall bill for these additional services on a Time-and-Materials basis in accordance with PEC's standard hourly rates. Additional services shall include, but are not necessarily limited to, the following: design time, drafting time, reproduction costs, coordination time, additional meetings, etc.

*Note that "value engineering" of the structural design after receipt of initial bids is not included in this proposal. Structural redesign required due to "value engineering" will be treated as an "Add" to the project. PEC shall bill for these additional services on a Time-and-Materials basis in accordance with PEC's standard hourly rates. Note that "redesign" time includes all time expended by PEC in order to investigate framing options/alternatives. PEC shall bill for engineering analysis (time) even if the analysis discovers that the proposed "value engineering" options are not feasible. Client is paying for time (and*

*expenses) incurred during the analysis. Client is not paying for a desired "result" of the analysis.*

10. A single review of structural shop drawings is included with this proposal.
11. Client agrees to completely indemnify PEC regarding the accuracy of any/all cost estimates provided by PEC. Cost estimates performed by PEC are based solely upon overall construction costs. PEC bases their estimates on past experience and general rules of thumb. PEC shall not be held liable for discrepancies or errors in cost estimates. PEC provides no guarantee of the accuracy of their estimates
12. Site visits performed by PEC are visual observations of the structural system for general conformance to the approved construction documents. The purpose of these observations is simply to identify whether or not the framing complies with the approved construction documents. Design of "repairs" to correct framing discrepancies and/or deviations is not included as part of the scope of work for a site visit. If framing discrepancies and/or deviations are identified by PEC – and if requested by Client - PEC shall investigate framing alternatives in an attempt to "repair" the existing as built framing. Any additional time spent investigating framing options shall be treated as an "Add" to the project. PEC shall bill for these additional services on a Time-and-Materials basis in accordance with PEC's standard hourly rates.

*Note that Client is paying for PEC to investigate framing options. PEC is not guaranteeing that the existing framing can be adequately reinforced to comply with design requirements. It is possible that PEC will investigate the framing – and the Contractor will still have to demolish and rebuild the existing framing. Client is paying for time (and expenses) incurred during the analysis. Client is not paying for a desired "result" of the analysis.*

13. The following items have been excluded from this proposal:
  - a. Designing/drafting exterior flatwork.
  - b. Red-lined as-builds.
  - c. Drafted as-builds.
  - d. Value Engineering.
  - e. Obtaining a subsurface investigation of the proposed project site.
  - f. Performing material testing. (Soils, Concrete, Mortar, etc.)
  - g. Performing "Special Inspections" as specified in Chapter 17 of the International Building Code.
  - h. Performing load tests.
  - i. Any work not specifically defined in the previous "Scope of Services".



14. Client shall provide PEC with a complete set of drawings in CAD/Revit and PDF format with every update.
15. Client shall provide PEC with preliminary HVAC drawings showing locations and preliminary sizes of duct runs. PEC shall bill on a time and materials basis for any structural redesign required as a result of not receiving the redlines during the initial framing design phase.

**COMMERCIAL TERMS:**

PEC proposes to provide the consulting structural engineering services specified in the previous "Scope of Services" and "Clarifications" for a lump sum of \$44,600 (forty-four thousand six hundred dollars). Client agrees to pay the Total Engineering Fee for the scope of services outlined herein. Any revisions or alterations in the scope of services will result in additional fee.

For the Client's use, PEC's fee is broken down as follows:

Building 5 (Restrooms)	\$ 3,100
Building 9 (Open Air Pavilion)	\$ 3,660
Building 11 (Concession)	\$ 3,660
Wall 17 (Investigation/Stabilization)	\$ 9,400
Design Review Meetings (Assumed 6 Meetings)	\$ 6,570
OAC Meetings (Assumed 6 Meetings)	\$ 6,570
Site Visits (Assumed 5 site visits)	\$ 4,625
Time for Minor Revisions	\$ 2,540
Miscellaneous	\$ 1,900
Shop Drawing Review	<u>\$ 2,575</u>
	\$ 44,600

***There are potential savings if the existing stone/masonry wall is demolished in its entirety, and a new masonry wall installed in its place.***

***This proposal includes \$2,540 for minor revisions to the structural design once the design is 80% complete. This includes 11 hours of engineering and 8 hours of drafting. PEC shall track personnel time associated with requested changes. PEC shall bill for personnel time in excess of 11 hours of engineering and 8 hours of drafting on a Time-and-Materials basis in accordance with PEC's standard hourly rates. (Additional services shall include, but are not necessarily limited to, the following: design time, drafting time, reproduction costs, coordination time, additional meetings, etc.) The additional time and expenses incurred by PEC shall be an approved "Add" to the contract.***

Client agrees to pay the Total Engineering Fee (previously specified) whether the project is constructed or not. Even if the project Owner chooses not to construct the project, Client is still responsible for paying PEC for the full contract amount.

Invoices will be submitted on a monthly basis. Payment for monthly invoices is due within 45 (forty-five) days of the invoice date. Any final balance is due within 45 (forty-five) days of your receipt of PEC's final invoice.

Invoices shall be submitted based upon work performed by PEC. Invoices may be due prior to deliverables (i.e., drawings, reports, calculations, etc.) being transmitted to the Client. Invoices are tied to work performed – not deliverables.

#### STANDARD HOURLY AND REIMBURSEMENT RATES:

Additional Services due to changes in scope as approved by Client will be invoiced based on the rate schedule below:

Principal	\$ 225.00
Project Manager	\$ 195.00
Senior Engineer	\$ 175.00
Licensed Engineer	\$ 145.00
Staff Engineer	\$ 140.00
CAD Designer	\$ 120.00
Revit Drafter	\$ 100.00
AutoCAD Drafter	\$ 90.00
Clerical	\$ 65.00

Reimbursables will be invoiced at the following rates:

Plots (24 x 36 and smaller)	\$ 3.50 per Sheet
Plots (Sheets larger than 24 x 36)	\$ 4.00 per Sheet
Prints (8.5 x 11)	\$ 0.20 per Sheet
Prints (11 x 17)	\$ 0.25per Sheet
Prints (12 x 18)	\$ 0.25 per Sheet
Mileage	\$ 0.70 per Mile
Couriers	At Cost + 15% Markup
Supplies	At Cost + 15% Markup
Travel	At Cost + 15% Markup

#### RIGHT TO WITHHOLD WORK:

PEC may withhold delivery of any drafts, work-in progress, final products or drawings in the event that any invoice has not been paid. PEC may also suspend any work in progress. Client agrees that PEC is entitled to withhold any deliverables or suspend work in progress due to Client's nonpayment until such time as all overdue invoices have been paid in full (including any additional fees and/or interest accrued due to delayed payment). Client agrees that PEC is not in breach of contract for withholding deliverables due to nonpayment.

#### CAD RELEASE:

PEC's contract does not include providing electronic copies of AutoCAD and/or Revit drawings to the General Contractor or sub-contractors. Electronic copies of PEC's drawings shall not be




provided to contractors, sub-contractors, project "Owner", or any other party without PEC's express written consent. During construction, if allowed by Client, the General Contractor or his subcontractors may request electronic copies of PEC's AutoCAD drawings and/or project specifications. In order to receive electronic copies of PEC's AutoCAD drawings, the party that requests the drawings must sign a "Release of Liability" form provided by PEC. In addition, the party requesting the AutoCAD drawings will be required to pay a \$250 fee to PEC for expenses associated with processing the drawing request.

Note that electronic copies of AutoCAD drawings will not include the engineer's seal.

PEC will not issue an electronic copy of their structural Revit model to a General Contractor or their sub-contractors. If PEC provides the Client with a structural Revit model, the Client shall not provide the structural Revit model to any other party without PEC's express written consent.

PEC reserves the right to refuse to issue electronic copies of any/all drawings.



Johnathan Powell, P.E.  
PEC Structural Engineering, Inc.