

**GEM INC. MASTER TERMS AND CONDITIONS OF
ARCHITECTURAL/ENGINEERING SERVICES CONTRACT AGREEMENTS**

1. GENERAL.

1.1. Definitions. For purposes of this Agreement, “**Contractor**” means GEM Inc. or any affiliate or subsidiary thereof issuing the Architectural/Engineering Services Contract; “**A/E**” means the architect or engineer named on the applicable Contract as the “Vendor” that is furnishing the Services; “**Owner**” means the person or entity with which Contractor has entered into a contract relating to the Project and, if such person or entity is not the owner of the Project, shall include the Project owner; “**Project**” means the project identified in the applicable Contract; “**Services**” means the services related to the Project that is the subject matter of the Contract, including without limitation all work and services reasonably inferable therefrom as being required, and all work and services that are normally and customarily furnished and reasonably necessary, to produce the intended result, whether or not specifically called for in the Contract; and “**Agreement**” means collectively these master terms and conditions, the contract issued by Contractor to A/E (the “**Contract**”) to which these terms apply, and any other documents incorporated by reference herein, including without limitation the agreement between Contractor and Owner and all documents referenced or incorporated therein (the “**Prime Contract**”), all of which are deemed incorporated by reference herein. A/E hereby assumes toward Contractor all of the rights, responsibilities, and obligations that Contractor assumes toward Owner in connection with the Project with regard to design services, and A/E agrees and consents to be bound by the Prime Contract documents to the same extent as Contractor is bound thereby, to the extent applicable to the scope of Services covered by this Agreement. A/E has read and understands all of the terms and conditions contained herein and agrees that either A/E’s written acceptance of the Agreement or commencement of any Services shall be deemed A/E’s acceptance of the Agreement.

2. ARCHITECT/ENGINEER’S RESPONSIBILITIES.

2.1. GENERAL

- 2.1.1. A/E’s Services consist of those services performed by A/E and A/E’s employees, representatives, agents, and consultants as set forth in the Agreement. A/E’s Services shall be performed in coordination with Contractor and Contractor’s designated Project representative(s).
- 2.1.2. In addition to its other obligations under the Agreement, A/E shall cooperate with Contractor and shall be bound to perform its Services hereunder in the same manner and to the same extent that Contractor is bound by the Prime Contract to perform such Services for Owner. A/E hereby assumes toward Contractor all of the rights, duties and responsibilities that Contractor assumes toward Owner under the Prime Contract relative to A/E’s Services.
- 2.1.3. A/E shall complete its Services for each phase of the Project at the times set forth in the Project Schedule, as amended and modified in the discretion of Contractor, and consistent with the terms of the Agreement. A/E’s Services shall be performed as expeditiously as possible consistent with the terms of the Agreement including, without limitation, the Standard of Care defined in Section 2.1.4. The Project Schedule includes allowances for periods of time required for Owner’s and Contractor’s review and approval of A/E’s Services and submissions to authorities having jurisdiction over the Project. Time limits established by the Project Schedule shall not be exceeded by A/E without the prior written approval of Contractor. Time is of the essence in the performance of A/E’s Services.
- 2.1.4. A/E’s Services (including any Additional Services) under the Agreement shall be performed in accordance with the highest standard of care for licensed architects and/or engineers engaged in providing similar architectural or engineering services (as the case may be) where the Project is located and comparable metropolitan areas for projects of similar size and complexity to the Project (the “**Standard of Care**”).
- 2.1.5. A/E shall provide to Contractor prior to commencement of A/E’s Services a list of A/E’s employees, representatives, agents, and consultants for the Project (collectively, “**Personnel**”), which shall not be changed without Contractor’s approval. A/E represents to Contractor that A/E will employ a sufficient number of Personnel to perform A/E’s Services and related obligations and duties under the Agreement in accordance with the time schedule established in the Agreement. A/E shall comply with all equal employment opportunity and other diversity opportunity programs as required by Owner’s program and federal, state, and local laws, rules, regulations, ordinances and codes. If requested by Contractor, A/E shall promptly replace, at A/E’s sole cost and expense, any employee, personnel, or consultant of A/E that Contractor, in its reasonable judgment, determines is not performing satisfactorily. Any employee, agent or consultant selected as a replacement shall be mutually agreed to by Contractor and A/E.
- 2.1.6. Each of A/E’S consultants shall be bound by the terms of the Agreement and shall assume toward A/E all of the obligations and responsibilities that A/E by the terms of the Agreement assumes toward Contractor. A/E’s consultants and A/E shall be jointly and severally liable to Contractor for the performance of such consultant’s services and for any errors or omissions in the performance of such A/E’s consultant’s services. Contractor shall be deemed an intended, third-party beneficiary of any and all agreements between A/E and its consultants relating to the Project. Each of A/E’s consultants shall be required, as a condition of payment to A/E, to furnish appropriate design professional liability insurance and other insurances relating to consultant’s work or services.
- 2.1.7. A/E represents, covenants and agrees that all persons connected with A/E who shall perform professional Services for the Project are duly licensed to practice under the laws of the State where the Project is located and that A/E and its consultants hold all corporate certificates and licenses (as may be required by law) necessary to perform the professional services in such individual and/or corporate capacity. All consultants employed by A/E shall be duly licensed, reputable, qualified firms or individuals with an established record of successful performance in their respective fields on projects of similar size and complexity. As required or requested by Contractor or Owner, A/E shall provide professional stamped or sealed documents by an appropriately registered engineer or architect.
- 2.1.8. A/E shall comply with all codes, rules and regulations governing the conduct and safety of contractors, consultants, employees, and agents, at and about the Project including, without limitation, safety and security requirements of Contractor and Owner. A/E shall ensure that A/E’s Agents comply strictly with such rules and regulations. If A/E fails to maintain the safety precautions required by Law or by the rules and regulations of Owner and/or Contractor, then

Contractor may take steps as necessary to ensure compliance and charge A/E therefor. However, the failure of Contractor to take any such action shall not relieve A/E of its obligations set forth in this Section 2.1.8.

- 2.1.9. A/E shall comply, and shall ensure that its Agents and the Services comply, with all applicable laws, ordinances, codes, rules, and regulations of federal, state, county, and/or municipal governmental entities (including code and fire officials) having jurisdiction over A/E, the Services (including Additional Services), the Project, and/or the Project site, including but not limited to those relating to safety, health, discrimination in employment, fair employment practices or equal employment opportunity, and with the requirements of the Fire Underwriters with respect thereto (collectively, "**Laws**").
- 2.1.10. Contractor may decline to approve an Application for Payment if, in Contractor's reasonable opinion, the Application is not adequately supported or itemized. If A/E and Contractor cannot agree on a revised amount, Contractor shall make payment for the amount not in dispute.
- 2.1.11. The submission of its final Application for Payment, and/or the acceptance of final payment by A/E, shall constitute a waiver of all claims by A/E for compensation for Services performed, excepting, however, claims previously made in writing and identified by A/E as unsettled at the time of its final Application for Payment.

3. SCOPE OF ARCHITECT/ENGINEER'S SERVICES.

3.1. GENERAL

- 3.1.1. A/E's Services consist of those described in this Article, and any other services or work identified in the Agreement as part of A/E's Services (collectively, "**A/E's Scope of Work**"), and include all programming, planning, design and civil, electrical, mechanical and structural engineering and other services that are normally and customarily furnished and reasonably necessary for the complete Project consistent with any and all applicable Laws.
- 3.1.2. Except as may be otherwise set forth in A/E's Scope of Work, A/E agrees that A/E's Services shall include A/E's attendance at Project meetings with the Project Manager ("**Project Meetings**") and the provision of all information required by Contractor in relation to such Project Meetings. A/E shall provide, as part of A/E's Services, all necessary revisions or modifications to the Schematic Design Documents, Design Developments Documents or Final Construction Documents, as the case may be, as required by any value engineering and modifications arising from such Project Meetings and adopted by Contractor.
- 3.1.3. Except as may be otherwise provided in A/E's Scope of Work, in all aspects of its provision of professional Services, A/E shall observe the following procedures:
 - (a) Report to Contractor or its representative during all phases.
 - (b) Coordinate all Services with Contractor and other consultants and contractors as determined by Contractor.
 - (c) Coordinate the Services of A/E's consultants.
 - (d) Meet with individuals, committees, area planning agencies, local, state and federal agencies and other entities having jurisdiction over the Project as required by Contractor and the nature of the Project.
 - (e) Upon request, revise and confirm all previous related services and provide the basis, source and methodology for arriving at estimates, projections and assumptions for all documentation.
- 3.1.4. Except as may otherwise be provided in A/E's Scope of Work, A/E shall provide the following Services during all phases of the Project:
 - (a) Furnish Contractor and present, where applicable, engineering data necessary for review and approval of applications as required by any local, state and federal authority, insurance companies, financial consultants or bond counsel.
 - (b) Coordinate and hold meetings during each phase of the Project with the Project Manager, representatives of Owner, and such other individuals as identified by Contractor, at such times as Contractor may request and as required by the terms of the Agreement and the nature of Project.
 - (c) Review and perform design and engineering obligations to meet compliance with applicable recommendations, designs and specifications, Project guidelines, codes, planning and zoning requirements, and regulatory, review or voluntary agency guidelines, whether mandatory or discretionary.
 - (d) Prepare and deliver to Contractor an estimate of Construction Costs (as defined in Article 5) and update such estimate monthly.

3.2. SCHEMATIC DESIGN PHASE

- 3.2.1. Based upon the program statement provided to A/E and the Project Schedule published by Contractor for the Project (as the same may be amended or supplemented in Contractor's discretion), A/E shall, except as may otherwise be provided in A/E's Scope of Work, prepare, for approval by Contractor, Schematic Design Documents consisting of drawings and other documents illustrating the relationships of any improvements to be constructed in connection with the site planning and development for the Project.

3.3. DESIGN DEVELOPMENT PHASE

- 3.3.1. Based on the approved Schematic Design Documents and any adjustments authorized by Contractor and Owner in the program statement, Project Schedule or Project Budget, A/E shall, except as otherwise set forth in A/E's Scope of Work, prepare, for approval by Contractor, Design Development Documents consisting of drawings, outline specifications and other documents describing the site planning and construction for the Project.

3.4. CONSTRUCTION DOCUMENTS PHASE

- 3.4.1. On or before the date set forth on the Project Schedule, A/E shall prepare, for approval by Contractor, complete and coordinated Construction Documents (the "**Final Construction Documents**") which shall consist of drawings and specifications setting forth in detail the qualities, quantities and other design requirements for the planning, development and construction of the Project.

- 3.4.2. Any changes or modification to the Final Construction Documents shall be clearly delineated for Contractor's reference. A/E shall, as requested by Contractor, periodically issue full-scaled conformed Construction Documents reflecting all prior changes.
- 3.4.3. The Final Construction Documents shall be complete and coordinated, and consistent with the Standard of Care and shall comply in all respects with any and all applicable laws, statutes, ordinances, codes, orders, rules and regulations relating to the Project and A/E's Services and Scope of Work.

3.5. CONSTRUCTION PHASE.

- 3.5.1. A/E shall provide all contract administration and other services during the construction phase as may be set forth in the Agreement or as required by Contractor or the Prime Contract.
- 3.5.2. Any and all designs, drawings, and specifications furnished by A/E or its Agents under this Agreement shall: (a) be suitable for the use for which they are intended; (b) be complete and accurate; (c) comply with all applicable Laws in effect as of the date that the design documents are prepared, and consistent with any changes in controlling Law that are published and known to become effective during the period of Project design and construction; (d) comply with all Project requirements and the Prime Contract; and (e) satisfy Contractor's Project performance and minimum design requirements.

4. ADDITIONAL SERVICES.

4.1. GENERAL

4.1.1. This Article 4 identifies work that is not included in A/E's Scope of Work and for which additional time or compensation may be warranted provided appropriate prior written approvals are issued by Contractor. Additional Services shall be paid for by Contractor as provided in the Agreement, in addition to the compensation for A/E's Scope of Work, unless or to the extent that such Additional Work is required or performed as a result of a negligent act or omission of A/E or failure of A/E to perform its obligations under the Agreement. Additional Services described in this Article 4 shall only be provided if authorized in advance in writing by Contractor. A/E shall be conclusively presumed to have waived any and all rights to additional time and compensation if it proceeds to perform any actual or alleged Additional Services without the express, advance written consent and direction of Contractor.

4.2. The following Services of A/E shall be Additional Services:

- 4.2.1. Making substantial revisions in Drawings, Specifications or other documents as follows:
 - (1) During any of the design phases, when such revisions are major revisions to the Project requested by Contractor or Owner and unrelated to an act or omission of A/E;
 - (2) During the Construction Documents Phase when such revisions are
 - (a) inconsistent with approvals or instructions previously given by Contractor, or
 - (b) required by the enactment or revision of applicable Laws subsequent to the preparation of such documents.
- 4.2.2. Providing services in connection with making material revisions to Drawings, Specification and other documentation resulting from substitutions approved in writing by Contractor.
- 4.2.3. The Services described in Section 4.2.1 and 4.2.2 shall be deemed Additional Services only to the extent A/E can demonstrate that a direct increase in A/E's costs has been incurred that otherwise would not have been incurred by A/E in the performance of its Scope of Work.
- 4.2.4. Providing Services that are a material increase in the scope of Services described in A/E's Scope of Work or otherwise reasonably required or inferable to complete the Scope of Work.

5. CONTRACTOR'S RESPONSIBILITIES.

- 5.1. Contractor shall provide information in Contractor's possession regarding Owner's requirements for this Project. A/E acknowledges that all such information provided by Contractor is for information only and the accuracy or completeness of such information is not warranted by Contractor. Notwithstanding any approvals or directions issued by Contractor pursuant to the Agreement or otherwise in connection with the Project, A/E shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and services furnished by A/E under the Agreement. A/E understands that it shall be responsible for confirming the accuracy of Contractor- or Owner-furnished information and documentation required for completion of the Scope of Work. A/E shall have the right to rely on Owner-furnished information and documentation to the same extent that Contractor has the right to rely upon such information and documentation, and A/E shall be bound to Contractor by all findings and determinations to the same extent as Contractor is bound to Owner.
- 5.2. Contractor shall render decisions in a timely manner pertaining to documents submitted by A/E in order to avoid unreasonable delay in the orderly progress of A/E's Services. A/E shall provide prompt written advance notice of required timeframes for such decisions by Contractor.
- 5.3. Notwithstanding anything to the contrary in this Article 5, Contractor shall be required to furnish information or services described in this Article 5 only to the extent that such information or service is both reasonably required and actually requested in writing by A/E in order to perform A/E's services under the Agreement.

6. PROJECT BUDGET/CONSTRUCTION COST.

6.1. ESTIMATING RESPONSIBILITY

- 6.1.1. Contractor shall inform A/E as to the Project budget, if any, for the work contemplated by the Agreement. A/E shall use its best efforts to prepare instruments or service, plans, reports and Construction Documents that comply with any Project budget.
- 6.1.2. As used throughout the Agreement, the term "**Construction Cost**" shall be the total cost to Owner of all elements of the Project designed or specified by A/E, and shall include the cost at current market rates of labor and materials furnished by Contractor and equipment designed, specified, selected or specially provided for by A/E. Construction Cost does not include the compensation of A/E and A/E's consultants.

7. OWNERSHIP OF DOCUMENTS.

7.1. All designs, drawings, specifications, reports and other professional services documentation prepared for this Project by A/E, its consultants and subcontractors (collectively, "instruments of service" or "**Work Product**") shall be the joint property of Contractor and Owner. Contractor and Owner may use all such Work Product in connection with the design, construction, maintenance, or modification of the Project. A/E may use any constituent parts of the drawings and other documents on other projects, except for any unique or distinctive aesthetic components or effects that, taken independently or in combination, will produce a project with a substantially similar overall appearance. In furtherance of the foregoing, A/E, for itself and its consultants and subcontractors, hereby unconditionally and irrevocably transfers and assigns to Contractor and Owner an exclusive, royalty-free license to any and all Work Product including, without limitation, all patents, copyrights, trademarks, service marks and other intellectual property rights of A/E and each of its consultants. Subject to the foregoing, A/E retains all other rights in and to such Work Product. Upon termination of the Agreement for any reason, A/E shall deliver all Work Product to Contractor, and both Contractor and Owner shall have the right to use the same for whatever purposes are necessary to complete, maintain, or modify the Project. It is understood and agreed that the rights granted to Contractor and Owner under this Article 7 shall survive termination of this Agreement for any reason.

8. DATA AND PROPRIETARY INFORMATION.

8.1. A/E shall abide by all confidentiality provisions contained in the Prime Contract and/or any separate Confidentiality Agreement executed by A/E in connection with the Project. A/E shall keep confidential, and not use for any purposes outside of the Agreement, any and all information and data that Contractor or Owner may identify from time to time as confidential or proprietary (whether in printed, electronic or other form) or in which A/E reasonably should know Contractor or Owner has a reasonable expectation of confidentiality. A/E shall not issue a press release, advertisement, publicity material, or similar matter or participate in a media interview concerning the Project without the prior consent in writing of Contractor. A/E shall be responsible for compliance of all confidentiality provisions by its officers, directors, shareholders, employees, and Agents.

9. DISPUTE RESOLUTION.

- 9.1. Unless a different form of dispute resolution is required under any agreement between Contractor and Owner, including the Prime Contract, any dispute or claim arising out of or related to the Agreement or the breach thereof shall, in the sole discretion of Contractor, be settled by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The award rendered by the arbitrator or arbitrators may be entered and enforced as a judgment in any court of competent jurisdiction. Notice of demand for arbitration shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. Any arbitration or dispute resolution proceeding under this Agreement shall, at the sole option of Contractor, be conducted in Toledo, Ohio. If the Prime Contract requires resolution of disputes through a forum other than arbitration, then A/E, if requested by Contractor, shall be joined in such proceedings. This agreement to arbitrate shall be specifically enforceable under the Ohio Arbitration Act (for Projects in Ohio) and the Federal Arbitration Act.
- 9.2. Any demand for arbitration or other claim by A/E shall be made within 90 days after the dispute or claim arises, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations or repose.
- 9.3. In any arbitration proceeding involving Contractor, Contractor shall have the right to include, by consolidation, joinder or in any other manner, any of A/E's Agents or subcontractors and vendors of Contractor whom Contractor believes to be substantially involved in a common question of fact or law with respect to such arbitration proceeding, claim, or dispute.
- 9.4. In the event of any dispute arising by or between Contractor and A/E, each party shall continue to perform as required under this Agreement notwithstanding the existence of such controversy. This provision specifically includes, but is not limited to, the obligation of A/E to continue to perform under the Agreement, without ceasing in any respect performance hereunder, notwithstanding potential disputes as to certifications of amounts to be due A/E under the Agreement. In the event of such a dispute, Contractor shall continue to pay A/E as provided in the Agreement, except only such amount as may be disputed or subject to set-off on account of Contractor's claimed damages.

10. TERMINATION, SUSPENSION OR ABANDONMENT.

- 10.1. The Agreement may be terminated by Contractor upon not less than ten (10) days' prior written notice should A/E fail substantially to perform in accordance with the terms of the Agreement through no fault of Contractor and such default has not been cured within ten (10) days after written notice thereof has been delivered to A/E. In addition, Contractor shall have the right to terminate the Agreement if: (a) A/E makes a general assignment for the benefits of its creditors; (b) a receiver is appointed on account of the insolvency of A/E; or (c) A/E materially breaches any term or provision of this Agreement.
- 10.2. Contractor shall have the right, at any time, to suspend the Project upon written notice to A/E. If the Project is suspended by Contractor for more than 90 consecutive days, then A/E shall be compensated for Services properly performed prior to notice of such suspension upon receipt of payment from Owner for such Services. When the Project is resumed, A/E shall have a right to request an equitable adjustment of the price for the Scope of Work for expenses incurred in the interruption and resumption of A/E's Services. The foregoing equitable adjustment shall take into account only the actual direct increase in A/E's cost of performing its Services as the result of such suspensions. A/E shall have no other right to compensation for extended overhead or other consequential damages.
- 10.3. The Agreement may be terminated by Contractor at its convenience, without cause or fault, upon not less than seven (7) days' written notice to A/E. In the event of termination for convenience not the fault of A/E, A/E shall be compensated for Services properly performed prior to termination, together with Reimbursable Expenses then due and reasonable and demonstrable demobilization expenses, if any. Contractor shall not be responsible for A/E's lost profit or overhead on the terminated portion of A/E's Services or for Services not performed.
- 10.4. In the event of any termination by Contractor under this Article 10, A/E shall promptly deliver to Contractor A/E's Work Product in a format as reasonably requested by Contractor.

10.5. Any termination under Section 10.1 that is deemed improper or wrongful shall be deemed a termination for convenience under Section 10.3, and A/E shall be compensated only as provided in Section 10.3.

11. PAYMENTS TO ARCHITECT/ENGINEER.

11.1. DIRECT PERSONNEL EXPENSE. Direct Personnel Expense is defined as the direct salaries of A/E's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

11.2. REIMBURSABLE EXPENSES. A/E shall submit in advance a budget of all anticipated Reimbursable Expenses that shall be subject to Contractor's approval (the "**Reimbursable Expense Budget**"). Reimbursable Expenses are in addition to compensation for Scope of Work and include expenses incurred by A/E and A/E's employees and Agents in the interest of the Project relating to: (a) authorized out-of-town travel (all air travel to be coach or business class); long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project, and (b) reproductions, postage, and handling of Drawings, Specifications, and other documents

11.3. PAYMENTS ON ACCOUNT OF BASIC SERVICES. Payments for the Scope of Work shall be made monthly and, where applicable, shall be in proportion to Services performed within each phase of Service.

11.4. PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES/REIMBURSABLE EXPENSES. Payments on account of A/E's Additional Services that were properly authorized by Contractor in advance and in writing, and for Reimbursable Expenses, shall be made monthly upon presentation of A/E's statement of services rendered or expenses incurred, provided that A/E furnishes substantiation satisfactory to Contractor of such Additional Services and Reimbursable Expenses.

11.5. ARCHITECT/ENGINEER'S ACCOUNTING RECORDS. A/E shall maintain accurate books and records with respect to all expenditures made with respect to the Project and Services performed in connection therewith, all in accordance with generally accepted accounting principles applied on a consistent basis, and Contractor shall have the right, at reasonable time, to examine, copy, and audit such books and records.

11.6. CONDITION PRECEDENT FOR PAYMENT. It is understood and agreed that all payments by Contractor to A/E for the Scope of Work or Services, or for Additional Services or Reimbursable Expenses, shall become due and payable by Contractor to A/E within ten (10) days of Contractor's actual receipt of payment from Owner. Contractor's actual receipt of payment from Owner for the Services and Scope of Work and any alleged Additional Services shall be an absolute, express condition precedent to Contractor's obligation to pay A/E. A/E assumes the risk of non-payment by Owner for any reason, including the creditworthiness of such persons or entities.

11.7. BASIS OF COMPENSATION. Contractor shall compensate A/E as follows, subject to all other terms of this Agreement:

11.7.1. **BASIC COMPENSATION.** For the Scope of Work, as described in Article 2, and any other services included in Article 13 as part of the Services or Scope of Work, Basic Compensation shall be computed as set forth in the Agreement. Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Scope of Work in each phase shall total the percentages of the total Basic Compensation as set forth in the Agreement.

11.7.2. **COMPENSATION FOR ADDITIONAL SERVICES.** For Additional Services, as described in Article 4, compensation shall be computed as set forth in the Agreement.

11.7.3. **REIMBURSABLE EXPENSES.** For Reimbursable Expenses, as described in Section 11.4, A/E shall be paid the amount of expenses incurred (without markup) by A/E, A/E's employees and Agents in the interest of the Project.

11.8. ADDITIONAL PROVISIONS. A/E shall, as a condition to payment, submit waivers and releases of liens and claims for Services and Scope of Work that is the subject of A/E's Application for Payment. Such waivers and releases shall be in a form acceptable to Contractor and Owner.

12. INSURANCE.

12.1. A/E shall carry and maintain, at its own cost, with such companies as are reasonably acceptable to Contractor, all necessary liability insurance (that shall include as a minimum the requirements set forth in Section 12.4, during the term of the Agreement, for damages caused or contributed to by A/E. All general liability policies and excess and umbrella policies shall name Contractor and Owner as an additional insured and shall be endorsed so as to be primary and non-contributory to any liability insurance carried by Contractor or Owner.

12.2. A/E shall purchase and maintain insurance to protect against claims arising out of the performance of A/E's Services. Such insurances include the coverages and minimum limits and requirements set forth in Section 12.4 or as specified in the Agreement. A/E shall keep such insurance in effect for a period of not less than 5 years after the date of completion of its Services for the Project. All policies of insurance shall be written on coverage forms acceptable to Contractor and by insurers that are acceptable to Contractor in Contractor's sole discretion. A/E covenants and agrees that the coverage afforded under the policy(ies) will not be canceled or materially changed without 30 days' prior written notice to Contractor.

12.3. If the Professional Liability Insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date of the Agreement, or the date that A/E actually commenced Services in furtherance of the Project, whichever is earlier, and shall include a supplemental extended reporting period provision. A/E shall cause each of A/E's consultants providing design or engineering work to maintain separate professional liability insurance to protect against claims arising out of the performance of such consultant's Services. Contractor may, in its sole discretion, require project specific policies of professional liability insurance.

12.4. Minimum insurance requirements:

- (a) Workers' compensation and employer's liability insurance to the full extent as required by applicable law and employer's liability insurance in the amount of \$1,000,000 per accident/disease/employee;
- (b) Commercial general liability coverage, including contractual liability and public liability coverage and completed operations, and naming Contractor as an additional named insured, in not less than the following amounts:
 - (i) Bodily injury: \$2,000,000 each occurrence and \$2,000,000 annual aggregate; and
 - (ii) Property damage: \$2,000,000 each occurrence and \$2,000,000 annual aggregate.

- (c) Business automobile liability insurance covering owned, non-owned and leased vehicles with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 - (d) Excess or umbrella liability of \$10,000,000.00.
 - (e) Professional Liability with a minimum limit of \$5,000,000.00 for each occurrence and \$5,000,000.00 annual aggregate.
- 12.5. All policies shall be endorsed to provide a waiver of subrogation in favor of GEM Inc., affiliates of Contractor, and Owner, and such other entities as are required by Contractor's agreements with Owner and others relating to the Project and Scope of Work.
- 12.6. All of the insurances required under this Section shall be confirmed through certificates of insurance provided by A/E to Contractor. With the exception of the professional liability insurance policy, all the policies of insurance shall be properly endorsed to name Contractor and Owner as an additional insured. All general liability insurance policies shall be endorsed so as to be primary to any liability insurance carried by Contractor. A/E shall provide Contractor certified copies of the policies of insurance evidencing the coverages and amounts set forth in this Section 12.
- 12.7. Contractor or Owner **shall not** be named an additional insured on the Professional Liability policy. No policy of insurance naming Contractor or Owner as an additional insured shall contain any exclusion or prohibition against first-party claims or claims by any party named as an additional insured.
- 12.8. To the extent that Owner or the Prime Contract requires additional insurance or coverages, then A/E covenants and agrees to furnish such insurance and coverages on such required forms and in such required amounts at no additional expense to Contractor. The greater insurance standards and/or requirements shall govern.

13. INDEMNIFICATION.

- 13.1. To the fullest extent not prohibited by law, A/E shall and does agree to indemnify, protect, defend, and hold harmless Contractor, all parent companies and affiliates of Contractor, and Owner, and their respective officers, employees, and agents (collectively, "**Contractor Indemnitees**") from and against all claims, damages, losses, liens, attested accounts, causes of action, suits, demands, fines, penalties, assessments, judgments, costs and expenses (including attorneys' fees and other costs of defense, whether incurred in defending claims or in seeking reimbursement and indemnity from A/E or otherwise), of any nature, kind or description (the foregoing, collectively, "**Losses**"), that (a) arise out of, are caused by or result from performance of A/E's Services or performance under this Agreement, (b) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to damage to or destruction of property, including the loss of use and consequential damages resulting therefrom, or (c) are caused by any negligent act, error or omission of A/E, anyone directly or indirectly employed by A/E, or anyone for whose acts A/E may be liable.
- 13.2. To the fullest extent not prohibited by law, A/E shall and does agree to indemnify, protect, defend, and hold harmless Contractor Indemnitees from and against all Losses that result from (a) any claimed infringement of any copyright, patent or other intangible property right by the design of the Project by A/E, anyone directly or indirectly employed by A/E or anyone for whose acts A/E may be liable or (b) breach or default by A/E under any terms or provisions of the Agreement.

14. MISCELLANEOUS PROVISIONS.

- 14.1. The Agreement shall be governed and construed in accordance with the laws of the State where the Project is located.
- 14.2. If the performance by either party of any obligation hereunder shall be delayed for any reason beyond such party's reasonable control, the time for the performance thereof shall be extended for a period equal to the number of days reflecting the actual impact on the Project Schedule of the incident causing the delay, provided that the party claiming delay has provided the other party with prompt written notice of the occurrence of such delay. Without limiting the foregoing, any delay caused by acts of God, wars, riots, embargoes, act of civil or military authorities, fires, floods, accident, quarantines, or unusually severe, unfavorable or catastrophic weather conditions shall be deemed a delay caused by reasons beyond a party's reasonable control. No extension of time shall be granted for delays on account of, or resulting from, weather conditions except for the catastrophic weather conditions referenced in the foregoing sentence that are abnormal for the period of time and could not have been reasonably anticipated, nor shall A/E be granted any time extension due to A/E's financial inability to perform. No extension of time shall be granted to A/E unless the delay affects the critical path of the Project and then only to the extent that the delay actually affects the critical path. No extension of time shall be granted to A/E to the extent that, notwithstanding the existence of any such circumstance beyond A/E's control, delay would have resulted in any event due to a concurrent unexcused delay by A/E.
- 14.3. Contractor and A/E, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to the Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of the Agreement. A/E shall not assign the Agreement without the written consent of Contractor, which Contractor may withhold in its sole discretion. A/E agrees to the assignment of this Agreement to Owner or Owner's lender as may be required by the Prime Contract.
- 14.4. This Agreement represents the entire and integrated agreement between Contractor and A/E relating to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Contractor and A/E. All exhibits, schedules, or other documents referenced in the Agreement shall be deemed incorporated herein by reference as though fully rewritten. Nothing contained herein or in the Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Contractor or A/E.
- 14.5. Preparation of this Agreement has been a joint effort of the parties and the resulting document shall not be construed more severely against one of the parties than against the other. The captions contained herein and in the Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope of intent of the Agreement or the intent of any provision contained herein. The invalidity of one or more phrases, clauses, sections, or articles contained in this Agreement shall not affect the validity of the remaining portions of the Agreement so long as the material purposes of these terms can be determined and effectuated. The Agreement may be executed by the parties in separate counterparts, each of

which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

14.6. Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to the Agreement shall be in writing signed by the party giving such notice and shall be hand delivered or sent by overnight courier, messenger or registered letter or fax, to the other parties at the address set forth in the first page of the Agreement. Each party shall have the right to change the place to which notice shall be sent or delivered by sending a similar notice to the others in like manner. The effective date of any notice issued pursuant to the Agreement shall be as of the addressee's receipt of such notice.

14.7. A/E is an independent contractor and shall not be deemed an agent, employee, or partner of Contractor. Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between A/E and Contractor.

14.8. All rights and remedies provided in the Agreement are in addition to all other rights and remedies available at law or in equity.

14.9. A/E represents that it has full power and authority to enter into the Agreement, and the persons signing on behalf of A/E are authorized to do so.

Acknowledged and Agreed:
ARCHITECT / ENGINEER:

Signature

Printed Name

TITLE: _____

CONTRACTOR:
GEM INC.

Signature

Printed Name

TITLE: _____