

TERMS AND CONDITIONS OF ARCHITECTURAL/ENGINEERING SERVICES AGREEMENT

ARTICLE 1

ARCHITECT/ENGINEER'S RESPONSIBILITIES

1.1 GENERAL

1.1.1 A/E has read and understands all of the terms and conditions of these Master Terms and Conditions and agrees that A/E's written acceptance or commencement of any services shall constitute A/E's acceptance of these Master Terms and Conditions.

1.1.2 A/E's Services consist of those services performed by A/E, A/E's employees and A/E's consultants as set forth in this Agreement. A/E's Services shall be performed in coordination with the Project Manager identified above.

1.1.3 In addition to its other obligations under this 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.

1.1.4 A/E shall complete its work for each phase of the Project at the times set forth in the Project Schedule, attached hereto as Exhibit B and made a part hereof. A/E's Services shall be performed as expeditiously as possible consistent with the Standard of Care defined in Subparagraph 1.1.5. The Project Schedule includes allowances for periods of time required for Owner's and Contractor's review and approval of 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.

1.1.5 A/E's Services under this Agreement shall be performed in accordance with the highest standard of care for licensed architects and/or engineers engaged in providing architectural or engineering services (as the case may be) in connection with projects similar to those required for the Project in comparable areas (the Standard of Care).

1.1.6 A/E represents to Contractor that A/E will employ a sufficient number of employees, personnel and/or consultants to perform A/E's duties to Contractor under this Agreement in accordance with the time schedule established in this 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, ordinances and codes. If requested by Contractor, A/E shall promptly replace any employee or consultant of A/E that Contractor, in its reasonable judgment, determines is not performing satisfactorily. Any of the foregoing replacements shall be at no

additional cost to Contractor, and any employee, agent or consultant selected as a replacement shall be mutually agreed to by Contractor and A/E.

1.1.7 Each of A/E's consultants shall be bound by the terms of this Agreement and shall assume toward A/E all of the obligations and responsibilities that A/E by the terms of this 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. Each of A/E's consultants shall be required, as a condition of payment to A/E, to furnish appropriate design professional and mechanics' lien waiver documentation relating to its services.

1.1.8 A/E represents, covenants and agrees that all persons connected with A/E who shall perform professional engineering work 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 engineering services in such 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.

1.1.9 A/E shall comply with Contractor's and Owner's rules and regulations governing the conduct and safety of contractors, consultants, employees and agents, at and about the Project. A/E shall ensure that A/E's employees, agents, consultants and subconsultants 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 the 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 Subparagraph 1.1.9.

1.1.10 Contractor may decline to approve an Application for Payment if, in the 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.

1.1.11 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.

ARTICLE 2

SCOPE OF ARCHITECT/ENGINEER'S BASIC SERVICES

2.1 GENERAL

2.1.1 A/E's Basic Services consist of those described in this Article, any other services identified in this Agreement as part of A/E's Services and those services described in A/E's Scope of Work attached hereto as **Exhibit C** (hereinafter, 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 Project.

2.1.2 Except as may otherwise be set forth in A/E's Scope of Work, A/E agrees that A/E's Basic Services shall include A/E's attendance at any 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 Basic 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.

2.1.3 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:

- .1 Report to Contractor or its representative during all phases.
- .2 Coordinate all services with Contractor and other consultants and contractors as determined by Contractor.
- .3 Coordinate the services of A/E's consultants.
- .4 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.
- .5 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.

2.1.4 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:

.1 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.

.2 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 this Agreement and the nature of Project.

.3 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.

.4 Prepare and deliver to Contractor an estimate of Construction Costs (as defined in Article 5) and update such estimate monthly.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 Based upon the program statement provided to A/E and the Project Design Schedule, 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.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 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. All applicable laws, statutes, ordinances, codes, orders, rules and regulations shall be considered during the Design Development Phase.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 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 and development of the Project.

2.4.2 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.

2.4.3 The Final Construction Documents shall be complete and coordinated and, consistent with the Standard of Care, shall comply with applicable laws, statutes, ordinances, codes, orders, rules and regulations.

2.5 CONSTRUCTION PHASE

2.5.1 A/E shall provide all contract administration and other services during the construction phase as may be set forth in A/E's Scope of Services.

ARTICLE 3

ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in A/E's Basic Services unless performed as a result of a negligent act or omission of A/E or failure of A/E to perform its obligations under this Agreement, and they shall be paid for by Contractor as provided in this Agreement, in addition to the compensation for A/E's Basic Services. The services described in this Article 3 shall only be provided if authorized in advance in writing by Contractor.

3.2 ADDITIONAL SERVICES

3.2 The following services of A/E shall be Additional Services:

3.2.1 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.

.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 codes, laws or regulations subsequent to the preparation of such documents.

3.2.2 Providing services in connection with making material revisions to Drawings, Specification and other documentation resulting from substitutions approved in writing by Contractor.

3.2.3 The services described in Paragraphs 3.2.1 and 3.2.2 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.

3.2.4 Providing services that are a material increase in the scope of services described in A/E's Scope of Work.

ARTICLE 4

CONTRACTOR'S RESPONSIBILITIES

4.1 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 this 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 this Agreement.

4.2 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.

4.3 Notwithstanding anything to the contrary in this Article 4, Contractor shall be required to furnish information or services described in this Article 4 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 this Agreement.

ARTICLE 5

PROJECT BUDGET/CONSTRUCTION COST

5.1 ARCHITECT/ENGINEER'S ESTIMATING RESPONSIBILITY

5.1.1 Contractor shall inform A/E as to the Project budget, if any, for the work contemplated by this Agreement. A/E shall use its best efforts to prepare plans, reports and Construction Documents that comply with the Project budget, if any, delivered by Contractor.

5.1.2 As used throughout this 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.

ARTICLE 6

OWNERSHIP OF DOCUMENTS

6.1 All designs, drawings, specifications, reports and other professional services documentation prepared for this Project by A/E, its consultants and subcontractors (collectively, "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 and maintenance 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. Subject to the foregoing, A/E retains all other rights in and to such Work Product. Upon termination of this Agreement for any reason, A/E shall deliver all such documents to Contractor and both Contractor and Owner shall have the right to use the same for whatever purposes are necessary to complete the work envisioned by the Project.

ARTICLE 7

DATA AND PROPRIETARY INFORMATION

7.1 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 this Agreement, any and all information and data that Contractor may identify from time to time as confidential or proprietary (whether in printed, electronic or other form). A/E shall be responsible for compliance of all confidentiality provisions by its officer, directors, shareholders, employees, consultants and subcontractors.

ARTICLE 8

DISPUTE RESOLUTION

8.1 Unless a different form of dispute resolution is required under the Prime Contract, any dispute or claim arising out of or related to this Agreement or the breach thereof shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof. Notice of demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. If the Prime Contract requires resolution of disputes through a forum other than arbitration, then A/E shall, if requested by Contractor, join in such proceedings.

8.2 Any demand for arbitration 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.

8.3 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 consultants whom Contractor believes to be substantially involved in a common question of fact or law with respect to such arbitration proceeding.

8.4 In the event of any dispute arising by or between Contractor and A/E, each party shall continue to perform as required under the Contract Documents 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 this Agreement, without ceasing in any respect performance hereunder, notwithstanding potential disputes as to certifications of amounts to be due A/E under this Agreement. In the event of such a dispute, Contractor shall continue to pay A/E as provided in this Agreement, except only such amount as may be disputed.

ARTICLE 9

TERMINATION, SUSPENSION OR ABANDONMENT

9.1 This Agreement may be terminated by either party upon not less than 10 days' prior written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination and such default has not been cured within 10 days after written notice thereof has been delivered to the defaulting party. In addition, Contractor shall have the right to terminate this Agreement if: (i) A/E makes a general assignment for the benefits of its creditors or (ii) a receiver is appointed on account of the insolvency of A/E.

9.2 Contractor shall have the right, at any time, to suspend the Project upon written notice to Contractor. If the Project is suspended by Contractor for more than 90 consecutive days, then A/E shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, A/E's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of A/E's Services. The foregoing equitable adjustment shall take into account any actual direct increase in A/E's cost of performing its services as result of such suspensions.

9.3 This Agreement may be terminated by Contractor at its convenience, without cause, upon not less than 14 days' written notice to A/E. In the event of termination not the fault of A/E, A/E shall be compensated for services 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 on the terminated portion of the A/E's Services.

9.4 Failure of Contractor to make payments to A/E in accordance with this Agreement shall be considered substantial nonperformance and cause for termination; provided, however, that this Agreement shall not terminate if Contractor makes payment of all undisputed amounts to A/E within 10 business days after Contractor receives A/E's written notice of its intent to terminate.

9.5 In the event of any termination by Contractor under this Article 9, A/E shall promptly deliver to Contractor A/E's Work Product in a format as reasonably requested by Contractor.

ARTICLE 10

MISCELLANEOUS PROVISIONS

10.1 This Agreement shall be governed and construed in accordance with the laws of

the State where the Project is located.

10.2 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 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.

10.3 Contractor and A/E, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. A/E shall not assign this Agreement without the written consent of Contractor, which Contractor may withhold in its sole discretion.

10.4 This Agreement represents the entire and integrated agreement between Contractor and A/E 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.

10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Contractor or A/E.

10.6 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.

10.7 The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope of intent of this Agreement or the intent of any provision contained herein.

10.8 Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this 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 this 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 this Agreement shall be as of the addressee's receipt of such notice.

10.9 The invalidity of one or more phrases, sentences, clauses, sections or articles contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.

10.10 All exhibits, schedules or other attachments referenced in this Agreement shall be incorporated into this Agreement by such reference and shall be deemed to be an integral part of this Agreement.

10.11 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.

10.12 This 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.

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

10.14 A/E has full power and authority to enter into this Agreement and the persons signing on behalf of A/E are authorized to do so.

10.15 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.

10.16 Time is of the essence in the performance of A/E's Services hereunder.

ARTICLE 11

PAYMENTS TO ARCHITECT/ENGINEER

11.1 DIRECT PERSONNEL EXPENSE

11.1.1 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

11.2.1 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 Basic and Additional Services and include expenses incurred by A/E and A/E's employees and consultants in the interest of the Project, as identified in the following clauses.

11.2.1.1 Expenses in connection with 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

11.2.1.2 Expense of reproductions, postage and handling of Drawings, Specifications and other documents.

11.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

11.3.1 Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 12.1.2.

11.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES/REIMBURSABLE EXPENSES

11.4.1 Payments on account of A/E's Additional Services 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

11.5.1 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.

ARTICLE 12

BASIS OF COMPENSATION

Contractor shall compensate A/E as follows:

12.1 BASIC COMPENSATION

12.1.1 FOR BASIC SERVICES, as described in Article 2, and any other services included in Article 13 as part of Basic Services, Basic Compensation shall be computed as set forth in **Schedule 1**, attached hereto and made a part hereof.

12.1.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the percentages of the total Basic Compensation as set forth in **Schedule 1**, attached hereto and made a part hereof.

12.2 COMPENSATION FOR ADDITIONAL SERVICES

12.2.1 ADDITIONAL SERVICES OF ARCHITECT/ENGINEER, as described in Article 3, but excluding services of consultants, compensation shall be computed as set forth in **Schedule 1**, attached hereto and made a part hereof.

12.2.2 FOR ADDITIONAL SERVICES OF CONSULTANTS, including additional structural, mechanical, electrical and chemical engineering services, compensation shall be computed as set forth in **Schedule 1**, attached hereto and made a part hereof.

12.3 REIMBURSABLE EXPENSES

12.3.1 FOR REIMBURSABLE EXPENSES, as described in Paragraph 11.2, and any other items included in Article 13 as Reimbursable Expenses, A/E shall be paid the amount of expenses incurred (without markup) by A/E, A/E's employees and consultants in the interest of the Project.

12.4 ADDITIONAL PROVISIONS

12.4.1 It shall be an absolute condition precedent to Contractor's obligation to pay A/E that Contractor shall have first received payment on A/E's invoice from the Owner under the Prime Contract. All payments due and payable on A/E's invoice shall be made within ten (10) days of Contractor's receipt of payment from the Owner.

ARTICLE 13

OTHER CONDITIONS OR SERVICES

13.1 INSURANCE

13.1.1 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 on **Exhibit D** attached hereto and made part hereof) during the term of this Agreement, for damages caused or contributed to by A/E. All general liability policies shall name Contractor and Owner as an additional insured and shall be endorsed so as to be primary to any liability insurance carried by Contractor or Owner.

13.1.2 A/E shall purchase and maintain insurance to protect against claims arising out of the performance of A/E's services caused by any errors, omissions or negligent acts for which A/E is legally liable. Such Professional Liability or Errors and Omissions Insurance shall have the minimum limits and requirements set forth on **Exhibit D**. 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. If the Errors and Omissions Insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date of this Agreement 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 errors and omissions (professional liability) insurance to protect against claims arising out of the performance of such consultant's services.

13.1.3 A/E shall provide Contractor with certificates of insurance and, if requested by Contractor, certified copies of the policies of insurance evidencing the coverages and amounts set forth in this Paragraph 13.1. The certificates of insurance shall contain a provision that the coverage afforded under the policy(ies) will not be canceled or materially changed without 30 days' prior written notice to Contractor.

13.2 INDEMNIFICATION

13.2.1 To the fullest extent not prohibited by law, A/E shall and does agree to indemnify, protect, defend and hold harmless Contractor and its officers, employees and agents from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorneys' fees and other costs of defense), of any nature, kind or description, that (a) arise out of, are caused by or result from performance of A/E's services hereunder, (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, and (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.

13.2.2 To the fullest extent not prohibited by law, A/E shall and does agree to indemnify, protect, defend and hold harmless Contractor and its officers, employees and agents from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorneys' fees and other costs of defense), of any nature, kind or description, 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 this Agreement.

This Agreement is entered into as of the day and year first written above.

ARCHITECT/ENGINEER:

CONTRACTOR:

GEM Inc.

By:

Name: _____

Its: _____

By: _____

Name: Douglas R. Heyman

Its: Senior Vice President/CFO

Date: _____

Date: _____

Company email address for executed copy: _____

LIST OF EXHIBITS AND SCHEDULES

- Exhibit A** - Description of Project
- Exhibit B** - Project Schedule
- Exhibit C** - Architect/Engineer's Scope of Work
- Exhibit D** - Insurance Requirements
- Schedule 1** - Architect/Engineer's Compensation

EXHIBIT A

Description of Project

EXHIBIT B

Project Design Schedule

EXHIBIT C

Architect/Engineer's Scope of Work

Design documents shall be stamped by an Ohio registered engineer.

EXHIBIT D

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 naming Contractor as an additional named insured, in not less than the following amounts:
 - (i) Bodily injury: \$1,000,000 each occurrence and \$2,000,000 annual aggregate; and
 - (ii) Property damage: \$1,000,000 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 (Errors and Omissions) with a minimum limit of \$5,000,000.00 for each occurrence and \$5,000,000.00 annual aggregate.
- (f) All policies shall be endorsed to provide a waiver of subrogation in favor of GEM Energy LLC, GEM Inc., affiliates of Contractor, and Owner, and such other entities as are required by Owner/Contractor agreements.

See Paragraph 13.1 for additional requirements.

SCHEDULE 1

Architect/Engineer's Compensation

State basis for compensation (i.e., lump sum, time/materials, cost plus fee, retainage, if any).