

**AGC DOCUMENT NO. 630  
STANDARD FORM OF AGREEMENT  
BETWEEN CONTRACTOR AND  
TESTING LABORATORY**

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This Agreement has important legal and insurance consequences. Consultation with an attorney and an insurance consultant is encouraged with respect to its completion or modification.

Agreement to:  
Vendor No:  
Subcontract No:  
Cost Code:

Gentlemen:

Attached please find two (2) copies of the Agreement for work to be done by your firm on the subject project. Please sign both copies and return them to us for countersignature, **within five days** of your receipt. **One fully executed copy will be returned electronically to email address provided on Page 7.**

Sincerely,  
GEM Inc.

Project Manager:  
Field Contact:

cc: Central File, Imaging

**ARTICLE 1**  
**AGREEMENT**

**SUBCONTRACT NO.**

**Vendor No.:**

**Cost Code:**

This Agreement is made this            day of            in the year Two Thousand Four, by and between the

**CONTRACTOR**

(Name and Address)

GEM Inc.  
6842 Commodore Dr.  
Walbridge, Ohio 43465-9738

And the

**TESTING LABORATORY**

(Name and Address)

For services in connection with the following

**PROJECT**

Whose **OWNER** is

(Name and Address)

Notice to the parties shall be given at the above addresses.

**ARTICLE 2**

**GENERAL PROVISIONS**

The Contractor has agreed in its agreement with the Owner to procure the services of a testing laboratory to provide certain testing and inspection services (as set forth in Exhibit A attached) in connection with the Project.

**2.1 TEAM RELATIONSHIP** The Contractor and the Testing Laboratory agree to proceed with the performance of the services required for the project on a basis of trust, good faith, fair dealing, and mutual cooperation, and each of them shall take all actions deemed by either reasonably necessary to complete the performance of services under this Agreement in an economical and timely manner.

**2.2 EXTENT OF AGREEMENT** This Agreement represents the entire agreement between the Contractor and the Testing Laboratory and supersedes all prior negotiations, representations and agreements, either written or oral.

**ARTICLE 3**

**TESTING LABORATORY'S RESPONSIBILITIES**

**3.1 SERVICES** The Testing Laboratory shall perform the services set forth in Exhibit A under the direction of a professional engineer licensed in the state where the Project is located and in accordance with applicable laws, regulations, and professional standards.

**3.2 REPORTS**

**3.2.1** The Testing Laboratory shall submit all written reports required by the Contractor as set forth in Exhibit B.

**3.2.2** The Testing Laboratory shall treat such written reports as confidential documents, and shall distribute any report only to the Contractor and any other party authorized in writing by the Contractor to receive a copy of such, except the testing Laboratory shall distribute reports as required by local laws and regulations and provide documents in response to subpoena if required.

**3.2.3** The Testing Laboratory shall retain, for the benefit of the Contractor, copies of all reports, and such supporting data as the Contractor requests, for a period of five (5) years, following its completion of services under this Agreement, or the length of time required by applicable law, whichever is greater.

**3.3** The Testing Laboratory does not assume any duties, responsibilities or obligations with regard to the Project which by custom or contract are vested in the designers, surveyors, governmental authorities or other parties.

**3.4** The Testing Laboratory is not authorized to supervise any facet of the Contractor's Work or to modify any requirement of the Project Specifications or other Contract Documents, nor to approve or accept any portion of the Contractor's Work, including labor or materials incorporated in the Contractor's Work. The Testing Laboratory shall not have the right to reject any materials, reject or modify the Contractor's means and methods, or stop the Contractor's Work, unless such right is provided in Exhibit A.

**3.5** The Testing Laboratory shall not provide supervision of or direction to the Contractor's personnel or its subcontractors, nor assume responsibility for the contractor's or its subcontractors' means, methods, techniques, sequences, procedures of construction or safety programs.

**3.6 STANDARD OF CARE**

**3.6.1** The Testing Laboratory shall perform all services in a manner consistent with the degree of care and skill ordinarily exercised by reputable members of the testing profession engaged during the term of the Agreement to perform similar services in the locality of the Project. No other warranty, either express or implied, is made or intended by this Agreement.

**3.6.2** The Testing Laboratory shall not be responsible for the errors or omissions of any party or parties involved in the design or manufacture of the Project, or the failure of any contractor or subcontractor of manufacturer to comply with the Project specifications or with the recommendations, written or oral, made by the Testing Laboratory.

**3.7 SAFETY** The Testing Laboratory has established and maintains written programs and procedures for the safety of its employees, subcontractors and consultants, and specifically disclaims any authority over or responsibility for the safety of personnel engaged in performance of the Contractor's Work at the Project site except that of the Testing Laboratory's employees, subcontractors and consultants. While at the Project site, the Testing Laboratory employees, subcontractors and consultants shall comply with all safety requirements and the procedures of the Contractor. Each party to this Agreement shall indemnify the other party from and against fines or penalties imposed as a result of safety violations, but only to the extent that such fines or

penalties are caused by its failure to comply with applicable safety requirements.

**3.8 RIGHT TO SUBCONTRACT WORK** With the prior written approval of the Contractor, the Testing Laboratory may subcontract laboratory procedures as the Testing Laboratory deems necessary to meet its obligations under this Agreement.

**3.9 AUTHORIZED REPRESENTATIVE** The Testing Laboratory shall designate in writing a person empowered to act as the Testing Laboratory's representative with respect to its performance under this Agreement. The Testing Laboratory's representative is . Such person shall have complete authority to bind the Testing Laboratory under this Agreement.

## ARTICLE 4

### CONTRACTOR'S RESPONSIBILITIES

**4.1 INFORMATION** The Contractor shall provide the Testing Laboratory with the Project documents and other available Project information requested in writing by the Testing Laboratory, as are listed in Exhibit C. The Contractor shall provide timely notice to the Testing Laboratory of changes made to the documents, plans or the Project.

**4.2 ACCESS** The Contractor shall provide the Testing Laboratory with reasonable access to the Project site, and shall facilitate its access to all shops, yards or other sites where materials for the Project are being prepared or stored, so as to assist the Testing Laboratory in its performance of all tasks reasonably necessary for the completion of services under this Agreement.

**4.3 AUTHORIZED REPRESENTATIVE** The Contractor shall designate in writing a person empowered to act as the Contractor's representative. The Contractor's representative is . Such person shall have complete authority to transmit instructions to, receive information and data from, interpret and define the Contractor's policies and decisions with respect to the Project, and order, at Contractor's expense, and additional services which may be requested of the Testing Laboratory by the contractor.

**4.4 NOTICE** The Contractor shall provide the Testing Laboratory with sufficient advance notice of the required performance of all services so as to allow the Testing Laboratory a reasonable period of time within which to coordinate the assignment of Testing Laboratory

personnel. The period of such advance notice shall be established by agreement of the parties.

### 4.5 SAMPLES

**4.5.1** The Contractor shall provide and deliver to the Testing Laboratory, for testing, representative samples of materials the contractor proposes to use, together with relevant data pertaining to those materials, unless such samples are to be obtained by the Testing Laboratory under this Agreement.

**4.5.2** The Contractor shall provide all labor and facilities on and off the Project site as may be needed by the Testing Laboratory to obtain samples, and to store and cure such samples that must remain on the Project site prior to testing.

**4.5.3** The Contractor shall pay the cost of retaining those samples which the Contractor requests be retained by the Testing Laboratory.

## ARTICLE 5

### INDEMNITY, INSURANCE AND WAIVERS

**5.1 INDEMNITY** To the fullest extent permitted by law, the Testing Laboratory shall indemnify and hold harmless the Contractor, the Contractor's other subcontractors, the Owner, and their agents, consultants and employees from and against all claims for bodily injury and property damage that may arise from the performance of services under this Agreement to the extent of the negligence attributed to such acts or omissions by the Testing Laboratory, the Testing Laboratory's subcontractors or consultants or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Contractor shall provide the same protection to the Testing Laboratory.

**5.2 INSURANCE** The Testing Laboratory shall maintain the insurance coverages stipulated in Exhibit D, and shall provide to the Contractor a copy of a certificate evidencing such coverage prior to performing any services under this Agreement.

### 5.3 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

**5.3.1** To the extent the Owner-Contractor agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, the Contractor and the

Testing Laboratory waive claims against each other for any consequential damages that may arise out of or relate to this Agreement. Similarly, the Testing Laboratory shall obtain from its subcontractors mutual waivers of consequential damages that correspond to the Testing Laboratory's waiver of consequential damages herein. To the extent applicable, this mutual waiver applies to consequential damages due to termination by the contractor or the Owner in accordance with this Agreement or the Owner-Contractor agreement.

5.3.2 To the extent the Owner-Contractor agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, damages for which the contractor is liable to the Owner including those related to Paragraph 5.1 are not consequential damages for the purpose of this waiver. Similarly, to the extent the Testing Laboratory-subcontractor agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, damages for which the Testing Laboratory is liable to lower-tiered parties due to the fault of the Owner or Contractor are not consequential damages for the purpose of this waiver.

**ARTICLE 6**

**PAYMENT**

6.1 The Contractor agrees to pay in accordance with Exhibit E for all services provided by the Testing Laboratory and for all expenses incurred by the Testing Laboratory. Payment shall be due thirty (30) calendar days from the date of receipt of the Testing Laboratory's invoice.

6.2 In the event that the Testing Laboratory or any of its personnel are requested by the Contractor to testify in court proceedings concerning the services provided under this Agreement, the Contractor agrees to pay to the Testing Laboratory the Testing Laboratory's then current rates for the time taken to prepare and to testify, together with all reasonable expenses incurred by the Testing Laboratory.

**ARTICLE 7**

**DISPUTE RESOLUTION**

7.1 **INITIAL DISPUTE RESOLUTION** If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration

Association. The location of the mediation shall be the location of the Project. Once a party files a request for mediation with the other party and with the American Arbitration Association, the parties agree to commence such mediation within thirty (30) days of the filing of the request. Either party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person to the other party and the mediator. Engaging in mediation is a condition precedent to any other form of binding dispute resolution.

**7.2 PERFORMANCE CONTINUATION AND PAYMENT**

Unless otherwise agreed in writing, the Testing Laboratory shall continue to perform the services under this Agreement during all dispute resolution proceedings. The contractor shall continue to make payments in accordance with this Agreement if the Testing Laboratory continues to perform.

**7.3 MULTIPARTY PROCEEDING**

To the extent disputes between the Contractor and the Testing Laboratory involve in whole or in part disputes between the Owner and the contractor, disputes between the Contractor and the Testing Laboratory shall be decided by the same tribunal and in the same forum as disputes between the Owner and the Contractor.

**7.4 DISPUTES BETWEEN CONTRACTOR AND TESTING LABORATORY**

In the event that the provisions for resolution of disputes between the Owner and the Contractor do not permit consolidation or joinder with disputes or third parties, such as the Testing Laboratory, resolution of disputes between the Contractor and the Testing Laboratory involving in whole or in part disputes between the Owner and the Contractor. At the conclusion of those proceedings, disputes between the Contractor and the Testing Laboratory shall be submitted again to mediation pursuant to Paragraph 7.1. Disputes not resolved by mediation shall be decided in the manner selected in the agreement between the Owner and the Contractor.

**7.5 COSTS OF DISPUTE RESOLUTION**

The cost of mediation proceedings shall be shared equally by the parties participating. The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by any other form of binding dispute resolution shall be entitled to recover from the other party reasonable attorney's fees, costs and expenses incurred by the prevailing party in connection with such dispute resolution process.

**ARTICLE 8**

**TERMINATION**

8.1 **TERMINATION BY EITHER PARTY** Either party may terminate this Agreement upon seven (7) days' written notice if the other party materially breaches its terms through no fault of the initiating party.

8.2 **TERMINATION FOR CONTRACTOR'S CONVENIENCE** Upon seven (7) days' written notice, the Contractor may, without cause, terminate this Agreement with the Testing Laboratory. If this Agreement is so terminated, the Testing Laboratory may recover from the Contractor payment for all services performed in accordance with this Agreement, all costs resulting from the termination, plus a reasonable profit, provided that the Testing Laboratory has delivered to the contractor all documents and information prepared by the Testing Laboratory, its consultants or subcontractors, for the Project.

## ARTICLE 9

### MISCELLANEOUS PROVISIONS

9.1 **ASSIGNMENT** Neither party may assign its interest in this Agreement without the express written approval of the other party.

9.2 **SEVERABILITY** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

9.3 **NO WAIVER OF PERFORMANCE** The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

9.4 **RIGHTS AND REMEDIES** The parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

9.5 **PRECEDENCE** If any provision of this Agreement conflicts with or is inconsistent with any provision of an Exhibit attached to or referenced in this Agreement, the provision of this Agreement governs, unless the other provision specifically refers to the provision it supersedes and replaces in this Agreement.

9.6 **JOINTDRAFTING** The parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to

execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

9.7 **GOVERNING LAW** The Agreement shall be governed by the laws of the State of Ohio.

**ARTICLE 10**  
**SCHEDULE OF EXHIBITS**

The attached Exhibits are part of this Agreement.

Exhibit	Name	Date	Pages
EXHIBIT A	Description of services to be provided		
EXHIBIT B	Listing of reports		
EXHIBIT C	Listing of Project documents and other information		
EXHIBIT D	Insurance requirements		
EXHIBIT E	Fee schedule		

This Agreement is entered into as of the date entered in Article 1.

CONTRACTOR: **GEM INC.**

ATTEST: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: Douglas R. Heyman

PRINT TITLE: Sr. Vice President

TESTING LABORATORY:

ATTEST: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

Company email address for executed copy: \_\_\_\_\_

REV 3/22/00  
Master File: AGC-630  
This File: Document267

**EXHIBIT A**  
**DESCRIPTION OF SERVICES**



**EXHIBIT B**  
**LISTING OF REPORTS**

**EXHIBIT C**  
**LISTING OF PROJECT DOCUMENTS**

**EXHIBIT D**

**INSURANCE REQUIREMENTS**

1. **Workers' Compensation:**
  - a) State in which Project is located Statutory
  - b) Applicable Federal Statutory  
(e.g. Longshoremen & Harbor Workers)
  - c) Employer's Liability: \$500,000 per Accident  
\$500,000 Disease, Policy Limit  
\$500,000 Disease, Each Employee
2. **Commercial General Liability:**
  - a) Bodily Injury:  
\$1,000,000 Each Occurrence  
\$1,000,000 Aggregate
  - b) Property Damage:  
\$1,000,000 Each Occurrence  
\$1,000,000 Aggregate
  - c) Products and Completed Operations to be maintained for one year after final payment:  
\$1,000,000 Aggregate
  - d) Property Damage Liability Insurance shall provide Explosion, Collapse, Underground coverage.
3. **Contractual Liability:**
  - a) Bodily Injury:  
\$ 1,000,000 Each Occurrence  
\$ 1,000,000 Aggregate
  - b) Property Damage:  
\$ 1,000,000 Each Occurrence  
\$ 1,000,000 Aggregate
4. **Personal Injury, with Employment Exclusion deleted:**  
\$ 1,000,000 Aggregate
5. **Business Auto Liability** (including owned, non-owned and hired vehicles):  
\$ 1,000,000 Combined Single Limit
6. **The Commercial General Liability** policy shall provide that:
  - a) General Aggregate shall be not less than \$ 1,000,000 and it shall apply in total to this Project only.
  - b) Fire Damage Limit shall be not less than \$ 50,000 on any one Fire.
  - c) Medical Expense Limit shall be not less than \$ 5,000 on any one person.
7. **Umbrella/Excess Liability:**  
\$ (\*\*\*) over primary insurance.  
\$25,000 or less retention for self-insured hazards each occurrence.  
\*\*\*Limits sufficient to take total coverage to \$ 1,000,000
8. **Contractor and Owner to be named on Acord certificate as primary additional insured (s).** Coverage for Completed Operations must include the Additional Insured(s).
9. **Prior to Subcontractor's arrival at jobsite,** Subcontractor's policy to be endorsed to show additional insured(s). This coverage to be primary relative to Contractor's and/or Owner's coverages. A copy of this endorsement must be furnished to Contractor.

**Name on Certificate must be the same as that shown on Subcontract, no exceptions!!!**

**Exhibit E**  
**FEE SCHEDULE**