

This is **EXHIBIT I**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 5, 2013.

Allocation of Risks

Paragraph 6.10 of the Agreement is amended and supplemented to include the following agreement of the parties:

I6.10.E *Mutual Waiver*

1. Consistent with the terms of Paragraph 6.10.E the Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, or any of them, shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, or warranties, express or implied, of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants.

I6.10.F *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Engineer's Compensation.* To the fullest extent permitted by law, notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, shall not exceed the total compensation received by Engineer under this Agreement.

I6.11.G *Conditions Beyond the Control of the Engineer*

1. The Owner recognizes that in the course of completing the services under this agreement, the Engineer may encounter conditions which are beyond the control of the Engineer and which create potential for claims against and additional costs to the Engineer which are not covered in fees earned for services provided. This category includes, but is not limited to the following:

- Unknown underground utilities or other man-made objects not properly located underground.
- Unavoidable contamination of subsurface areas, aquifers, etc. or the disturbance of natural underground resources during the design and construction of the project.
- Changed codes or standards during the course of the work.
- Information provided by others which is not accurate or complete.
- Conditions that may arise and differ significantly from those existing at the beginning of the project.

Should any such condition occur during the performance of this Agreement, judged to be beyond the control of the Engineer, the Engineer will promptly notify the Owner, and the parties will renegotiate the Agreement. If terms cannot be agreed to, the parties agree that either party has the right to terminate the Agreement. The Owner agrees to compensate the Engineer for any time spent and expenses incurred by the Engineer in defense of any such claim with such compensation to be based upon the Engineer's prevailing fee schedule and expense reimbursement policy.

16.11.H *Statutes of Limitations*

1. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run in any and all events not later than either the date of Substantial Completion of the project for acts or failures to act occurring prior to Substantial Completion or the date of Final Payment for acts or failures to act occurring after Substantial Completion.

16.11.I *Betterment*

1. If Engineer mistakenly leaves out of the Construction Documents any component or item required for the Project, Engineer shall not be responsible for the cost or expense of constructing or adding the component or item to the extent such item or component would have been required and included in the original construction documents. In no event will the Engineer be responsible for any cost or expense that provides betterment, upgrades or enhances the value of the Project.

~~[or]~~

- ~~1. *Engineer's Liability Limited to Amount of Insurance Proceeds.* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied, of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed \$_____.~~

~~[or]~~

- ~~2. *Engineer's Liability Limited to the Amount of \$_____.* Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, shall not exceed the total amount of \$_____.~~

~~[NOTE: If appropriate and desired, include
16.10.B.2 below]~~

- ~~3. *Exclusion of Special, Incidental, Indirect, and Consequential Damages.* To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.10.E the Engineer and Engineer's officers, directors, partners, employees, agents,~~

and Engineer's Consultants, or any of them, shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, or warranties, express or implied, of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, and including but not limited to:

[NOTE: list here particular types of damages that may be of special concern because of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc. If the parties prefer to leave the language general, then end the sentence after the phrase "or any of them."]

[NOTE: the above exclusion of consequential and other damages can be converted to a limitation on the amount of such damages, following the format of Paragraph 16.10.B.1 above, by providing that "Engineer's total liability for such damages shall not exceed \$____."]

[NOTE: If appropriate and desired, include 16.10.B.3 below]

[NOTE: The foregoing provisions may be included as a supplement to Paragraph 6.10.E, which contains a mutual waiver of damages applicable to the benefit of both Owner and Engineer.]

4. ~~Agreement Not to Claim for Cost of Certain Change Orders.~~ Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement ("Covered Change Orders"). Accordingly, Owner agrees not to sue and otherwise to make no claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed ____% of Construction Cost, and then only for an amount in excess of such

percentage. Any responsibility of Engineer for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that Owner would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents and without any other error or omission of Engineer related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term Engineer includes Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants.

[NOTE: The parties may wish to consider the additional limitation contained in the following sentence.]

Owner further agrees not to sue and otherwise to make no claim directly or indirectly against Engineer with respect to any Covered Change Order not in excess of such percentage stated above, and Owner agrees to hold Engineer harmless from and against any suit or claim made by the Contractor relating to any such Covered Change Order.]

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