

**ATTACHMENT A
ADDITIONS TO GENERAL PROVISIONS**

PART 1 – GENERAL

GENERAL PURPOSE OF THESE ADDITIONS TO GENERAL CONDITIONS

- A. These Additions to the General Conditions were prepared by Dixon Engineering, Inc. using paragraphs from Engineering Joint Contract Documents Committee (EJCDC) General Conditions GC-700 -18 which were modified by DIXON as they pertain to the coating industry. The General Conditions of this Contract were prepared by the Owner. These Additions to General Conditions are intended to supplement the Owner's General Conditions as they relate to this specific Project. For example:
1. The Owner's General Conditions detail the payment process, how to submit a Request for Payment application, what form to use and when and where to submit the application. These Additions to General Conditions detail how DIXON calculates approval of a pay request, no payment for stored materials, percentage complete calculation methodology, etc.
 2. Liquidated Damages (if applicable) are defined in the General Conditions including when, where, and amount. In the Additions to General Conditions the method of calculating claimed wind and weather days is detailed.
- B. These Additions to General Conditions follow the EJCDC format and the Article numbers reflect the Article number in the 2018 edition of the EJCDC General Conditions. Note that not all Articles or subsections are referenced.

DISCREPANCIES BETWEEN THE OWNER'S GENERAL CONDITIONS AND THESE ADDITIONS TO GENERAL CONDITIONS.

- A. If the conflict is administrative in nature, then the Owner's General or Supplemental Conditions govern. Examples are Pay Request procedures, filing a Claim, etc.
- B. If the conflict is of a technical nature, then the Additions to General Conditions govern.
- C. An issue determined to be in conflict in a specific item does not void other non-conflicting paragraphs in the same Article number.
- D. Bidders are required to familiarize themselves with all the General and Supplemental Conditions of the Contract, as well as these Additions to General Conditions.
- E. In all cases of discrepancies between the General Conditions, the Supplemental Conditions, the Additions to General Conditions, the Technical Specifications and/or the Drawings, the Engineer is to be notified. The Specifications are to govern over the Drawings.
- F. If Work proceeds without the Contractor obtaining proper interpretations of the conflicting issues from the Engineer, any installed Work that is not in accordance with the Specification, and best practices are to be replaced at no additional cost and other costs that may occur are also the responsibility of the Contractor if they were aware of the conflict.

ARTICLE 1 DEFINITIONS AND TERMINOLOGY

1.01 DEFINED TERMS

- A. Construction Industry Definitions: These definitions are taken from the EJCDC General Conditions C-700-18, the 2018 edition and some were modified by DIXON to be specific to the coating industry.

1. *Bulletin* - If time permits, a Bulletin is issued prior to a Change Order. A Bulletin is an inquiry of the Contractor of the cost to complete the Work described in the Bulletin. It is intended as the basis of a Change Order if all parties reach agreement. A Bulletin may be considered as the same as a Change Proposal except that a Bulletin is generated by the Engineer because it generally requires Specifications to be addressed.
2. *Change Order (CO)* - is a written order to the Contractor signed by the Owner, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract sum or the Contract time. A document which is signed by the Contractor and the Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
3. *Change Proposal* - A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a Set-off against payments due; or seeking other relief with respect to the terms of the Contract.
4. *Constituent of Concern (CC)* - Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead based paint (as defined by the HUD/EPA standard) hazardous waste, and any substance, product, waste, or other material. Lead, chrome, and other by-products of paint removal, as well as strippers, new coatings, and thinners, are to be included in this definition. Coating industry related CC, from new or from previous projects cannot be the basis of Contract Termination or Change Proposal by the Contractor.
5. *Drawings* - The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor. A Shop Drawing is not a Drawing and is not part of the Contract Documents.
6. *Electronic Document* - Any Project-related correspondence, attachments to correspondence, data, documents, Drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
7. *Electronic Means* - Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
8. *Field Order* - A written order issued by the Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
9. *Hold Point* - A point in the construction sequence when the Contractor is required to stop Work on that portion of the Project until Work has been Site reviewed by RPR or Project Manager.
10. *Inspection* - is term which originally applied to both quality control (contractor's responsibility) and quality assurance (engineer's service). There will remain some reference to inspection but all references to inspection when it is obviously the engineer's service shall be understood to mean observation, whether the word is capitalized or not.
11. *Non-Conformance Report* - A report written by the Engineer or Resident Project Representative, to document the Contractor's Work that does not meet requirements of the Specifications or Contract.
12. *Performance Specifications* - Specifications that require the manufacturer or supplier of equipment, materials, or systems to design, manufacture, deliver, and install products to

achieve specific results under stipulated conditions of operation and in environments described in applicable Specification Sections.

13. *Ready for Final Payment* - This term is used to define a time when Liquidated Damages begin, separate from Liquidated Damages for failure to meet Substantial Completion Date. Ready for Final Payment Date is generally listed 30 days after Substantial Completion Date. All punch list items are to be completed, Site cleaned and restored, and equipment removed. At the option of the Owner this Liquidated Damage may be in addition (cumulative) with a Liquidated Damage for failure to meet Substantial Completion Date.
14. *Resident Project Representative* - The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
15. *Schedule of Values* - A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment. The Schedule of Value Form is supplied in these Bidding Documents as Section 00 54 00. This Schedule is to be submitted with the Bid. Adjustment of Schedule of Values by Engineer will not change the total Bid as calculated by the Contractor completing the Schedule of Values.
16. *Set-off* - Owner may withhold from payment including Final Payment an amount equal to additional expenses incurred by Owner which were the responsibility of the Contractor. Such expenses may include additional engineering expenses related to excess review of incomplete submittals of Shop Drawings, pay requests, or bonds and insurance, excess Requests for Information, excess tests and inspections and return visits to the site to complete a reinspection of a previously failed inspection, increase inflation in engineering fees that result from Contractor delaying Project into the next season; additional expenses incurred by Owner resulting from Contractor failure to clean site, site rehabilitation, and other construction related expenses resulting from Contractor not completing their Contractual obligations.
17. *Site* - Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
18. *Specifications* - The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
19. *Submittal* - A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by the Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
20. *Submittal Acceptance* – either "approval" or "No Exception Taken" – Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract documents and be compatible with the design concept of the completed project as a functioning whole as indicated in the Contract Documents.

21. *Substantial Completion* - The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof. The date of Substantial Completion is the date the structure is, or would have been returned to service, except for voluntary delay by Owner. The date of Substantial Completion is after complete cure, disinfection, and testing.
 22. *Work Change Directive* - A written directive to the Contractor issued on or after the Effective Date of the Contract, signed by the Owner and recommended by the Engineer, ordering an addition, deletion, or revision in the Work.
- B. *Defective*:
1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. Does not conform to the Contract Documents; or
 - b. Does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion).
 - d. All Work completed that is rejected by an unresolved non-conformance report.

ARTICLE 2 PRELIMINARY MATTERS

2.03 BEFORE SCHEDULING PRECONSTRUCTION CONFERENCE

- A. Preliminary Schedules: Within 10 days after the Effective Date of the Agreement (or as otherwise specifically required by the Contract Documents), Contractor is to submit to Engineer for timely review the furnished schedule of submittals with all required submittals.
- B. After all submittals have been reviewed and approved, the Engineer will schedule a Preconstruction Conference at a date and time mutually agreeable to Owner, Engineer, and Contractor.

2.04 PRECONSTRUCTION CONFERENCE

- A. Preconstruction Conference is herein called Preconstruction Meeting:
 1. Attend a Preconstruction Meeting that may be scheduled by the Owner at a mutually agreeable time after Contract preconditions, bonds, certificates of insurance, and other requirements have been met.
 2. A Corporate Officer, or someone with legal authority to obligate the company/corporation, Project Manager (if different from officer), and the intended superintendent are to attend. If the Project Superintendent does not attend the meeting, it is to be the Contractor’s responsibility to supply the information discussed at the meeting to the Field Superintendent.
 3. The Owner will be represented by the Project contact person, and the Engineer by the Project Manager, or a Contract Administrator.
 4. All containment, personal hygiene, and lead control issues required in this Contract will be reviewed. Be prepared to commit designated “Competent Person(s)” to responsibilities of confined space, scaffold rigging, lead, etc.
 5. At the Preconstruction Meeting the Contractor shall submit Progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the

Work, including any Milestones specified in the Contract. If the schedule is aggressive, working overtime, weekends, and/or holidays, that time is to be reflected in the Project schedule. Once the Project has begun, the Contractor is to carry the Project schedule to completion without delay.

B. Progress Meetings:

1. The Project Manager or Owner will schedule Progress Meetings to be held on the job Site whenever needed to supply information necessary to prevent job interruptions, to observe the Work, or to inspect completed Work. The Contractor is to be represented at each Progress Meeting by persons with full authority to act for the Contractor regarding all portions of the Work.

ARTICLE 3 CONTRACT DOCUMENTS INTENT REQUIREMENTS, REUSE

3.01 INTENT

- A. The Drawings and Specifications are intended to include all Work and materials necessary for completion of the Work. Any incidental item of material, labor, or detail required for the proper execution and completion of the Work and omitted from either the Drawings or Specifications or both, but obviously required by governing codes, local regulations, trade practices, operational functions, and good workmanship, is to be provided as a part of the Contract Work without extra cost, even though not specifically detailed or mentioned.

ARTICLE 4 COMMENCEMENT AND PROGRESS OF THE WORK

4.01 COMMENCEMENT OF CONTRACT TIMES

- A. Contractor is to start to perform the Work on the date when the Contract Times commence to run. No Work is to be done at the Site prior to such date except as recommended immediately following or by written authorization of the Owner AND the Engineer (Engineer must be able to schedule appropriate RPR for Project.) Contract time is governed by out-of-service time. The Contractor is encouraged to deliver equipment to the Site prior to Contract start. The Site will be available up to two (2) weeks prior to the agreed drainage date. The Contractor is also encouraged to rig the structure, complete containment installation, and complete weld repairs that do not affect the wet interior prior to draining of the structure. The amount of Work completed is to have been approved at the Preconstruction Meeting. Since the structure is not out of service these dates do not apply against Out of Service time but may require scheduling RPR services (see Section 00 91 19.01 Scheduling for RPR Services).
- B. Delaying Work start for the convenience of the Contractor may require Owner to Set-off inflation increased Engineering or RPR expenses against Contractor's Request for Payment.

4.05 DELAYS IN CONTRACTOR'S PROGRESS

A. Liquidated Damages

1. Contract time is governed by out-of-service time.
2. The date of Substantial Completion is the date the structure is or would have been returned to service, except for voluntary delay by Owner. The date of Substantial Completion is after complete cure, disinfection, and testing. A voluntary delay in filling by Owner, or delay that is no fault of the Contractor, may extend Substantial Completion date.

3. Abnormal weather conditions are defined as weather conditions that are at variance with the routine. Below is an **example** of the determination procedure and of the required claim format, and is not intended to match the specified project:
 - Project length: 45 days
 - Substantial Completion date: June 30th.
 - Start date: May 16th.
 - 3 years of data* 2023, 2024, 2025
 - Average number of rain/wind days: 9
 - Actual number of rain/wind days**: 12
 - Claim for time extension: 3 days.
4. *Submit weather history from nearest weather reporting station for three (3) previous years from the same time period. Submit formal, by simple claim (use format above).
5. **Rain/wind day is a rain or wind day where either rain and/or wind conditions exceeded safe Work conditions or were outside the parameters of good paint practices. Wind days are winds in excess of 20 mph for over four (4) hours during normal Work hours, and rain days having measurable precipitation.
6. Weather Claim Evaluation: The Engineer will evaluate claim and make sole determination as to whether days meet criteria. Engineer will disallow dates where Work could have been completed on the interior; dates that result from the Contractor's Work practices (i.e., complete wet interior first and then move to the exterior). Good weather days not used will count against the claim.
7. Claimed rain/wind days that occur after the scheduled Substantial Completion Date, or an extended Substantial Completion Date will not be awarded. Days past Substantial Completion Date and good weather days that were not used for Productive Work will be considered "days within the control of the Contractor."

ARTICLE 5 SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENT CONDITIONS

5.02 USE OF SITE AND OTHER AREAS

A. Site:

1. Protection - The Contractor is responsible for the protection of property during the period of construction and is to exercise care to prevent damage to structures, utility services, storm and sanitary drainage systems, lawns, trees, plant material, fences, walks, drives, roadways, hydrants, and other improvements in and adjacent to the area of Work under the Contract. Any damage to property resulting from the Contractor's operations is to be repaired or replaced by the Contractor at their expense.
2. The Contractor is to be responsible for all injury to Work in process of construction, and for all property or materials stored at the premises that may be damaged or stolen while the Work is in their care, at Contractor's expense.
3. The Contractor is to confine the apparatus, the storage of materials, and the operations of their Workers to limits indicated by law, ordinance, permits, or direction of the Engineer, and is not to unreasonably encumber the premises with their materials.
4. Maintenance
 - a. Provide labor and material necessary to maintain the Site in a safe condition.
 - b. Keep the premises free from accumulation of waste materials, rubbish, and other debris resulting from the Work.

- c. At completion of the Work, remove all waste materials, rubbish, and debris from about the premises, as well as all tools, construction equipment, machinery, and surplus materials.
 - d. At the Contractor's expense, repair damage that may have occurred to any permanent structure completed under the Contract Work, or to private or public property.
 - e. Notify the Owner of your intentions and the reasons why, if it is necessary to protect adjacent houses, cars, etc. During clean-up these areas will be considered as part of the Site and is to be cleaned accordingly.
 - f. Failure to continually maintain the Site or to immediately clean the Site after a complaint or Project Completion may result in the Owner completing the Work by hire or by the Owner's forces. All cost would be responsibility of the Contractor, subject to Set-off.
 - g. Restore Site to preconstruction condition:
 - i. Refill holes and level area around the construction Site for the Site to the original grade.
 - ii. Bring soil to a friable condition by disking, harrowing, or otherwise loosening and mixing to a depth of 3 in. – 4 in. Thoroughly break all lumps and clods.
 - iii. Rake area to be seeded. Sow seed at a minimum rate of 220 lbs./acre.
5. Cleaning - Prior to Substantial Completion of the Work Contractor is to clean the Site and the Work and make it ready for utilization by the Owner. At the completion of the Work, but prior to Ready for Final Payment, Contractor is to remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and is to restore to original condition all property not designated for alteration by the Contract Documents.

5.03 SUBSURFACE AND PHYSICAL CONDITIONS

- A. Locations of all buried utility service lines in or adjacent to the Work area that are not shown on the Drawings will be located by the Contractor through the local utility locating agency and marked with warning stakes. The Contractor is to be responsible for the protection of all utility service lines that are to remain. Damage to any such utility service lines, pipes, etc. resulting from the Contractor's operations are to be repaired or replaced by the Contractor at their expense. Underground Work in the coating industry involves drilling for anchors for containment systems. The painting of pit piping will be considered subsurface Work. For this type of Work the Contractor must rely on Utility Locating Services and not Technical Data from Owner, or in the case of pits, a visual inspection. Contractor is to notify each utility before digging for anchors or for any reason. Before starting, call in advance or/as required by the individual agencies: Call 811 or the appropriate agency in the state of the Project.

5.06 HAZARDOUS ENVIRONMENTAL CONDITIONS AT THE SITE

- A. Contractor is not responsible for removing or remediating any Hazardous Environmental Condition (Constituents of Concern) encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the Scope of the Work or eventually identified as being caused or created by the Contractor.
- B. Power Lines – Antennas – Electrical Wiring

1. If overhead power lines present an unsafe Work condition as determined by OSHA, the Owner or utility, and the Contractor at their expense and coordination, is to have the utility temporarily relocate, move, or cover lines, eliminating the hazard.
2. Unless stated differently in Contract Documents, protect all antennas, controls, cables, and associated property of Owner's equipment or material on, in or near the structure during Work. Design construction procedures to maintain operation of antenna system. If antennas are removed from the structure protect all telecommunication equipment remaining in place.
3. Unless stated differently in the Contract Documents, protect all electrical lines and controls including 110/220 V. service lines, cathodic wiring, lights, globes, outlets, and service boxes. Protect associated property of private telecommunication companies (911, school buses, etc.) from damage during Work. Design construction procedures to maintain operation of telecommunication systems.

ARTICLE 6 BONDS AND INSURANCE

6.01 PERFORMANCE, PAYMENT, AND MAINTENANCE BONDS (NOT BID BONDS)

- A. Supply a Maintenance (Warranty) Bond for two (2) years at 50% of the Contract price, to ensure any repair work required or detected as a result of the (13) months (1 year) Post Construction inspection. The repair scheduling may be delayed several months for Contractor's schedule or Owner's operational requirements. This bond is to remain in effect until repairs have been completed and accepted. Per Technical Specifications, if repairs exceed 10% of any area, then the Warranty and bond are to be extended another year. The Maintenance (Warranty) Bond must be issued by the same surety that issues the Performance Bond.

ARTICLE 7 CONTRACTOR'S RESPONSIBILITIES

7.01 CONTRACTOR'S MEANS AND METHODS OF CONSTRUCTION

- A. The Contractor is to supervise, direct, control, and have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, and the safety precautions and programs incident thereto.
- B. Any plan or methods of accomplishing the Work suggested to the Contractor by the Engineer or other representative of the Owner, but not specified or required, is to be used at the Contractor's own risk and responsibility. The Engineer and Owner assume no responsibility.
- C. The Contractor is to comply with Laws and Regulations applicable to the performance of the Work.
- D. The Contractor is to perform the Work in accordance with the Contract Documents. Contractor's obligation to perform under terms of Contract and complete the Work in accordance with the Contract Documents is absolute.
- E. The Contractor is to be responsible for the acts or omissions of Contractor and of any Subcontractor, any Supplier, and of any other individual or entity performing any of the Work.

7.02 SUPERVISION AND SUPERINTENDENCE

- A. Contractor is to supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

1. At all times during the progress of the Work, the Contractor is to assign a competent Resident Superintendent who is to not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.
2. Resident Superintendent is to be fluent in English to the level of competency to complete responsibilities of the Contractor and to communicate with the RPR. The Superintendent is to also be fluent or have access to a translator on site, for the primary language of all of the Workers. Degree of fluency in English and language of Workers to be sufficient so that Superintendent's employees can adequately and safely complete their duties.
3. No employee of Contractor, Subcontractor, or Supplier may be on the Project Site who cannot be directed by a Superintendent, or translator in regard to work assignments, safety issues, or who cannot understand safety signage.

7.03 LABOR; WORKING HOURS

- A. Provide equipment of sufficient size and power to expedite the Project so that all deadlines are met. Personnel and crew size is to be sufficient to meet required deadlines.
- B. If, in the sole opinion of the Engineer, there is insufficient equipment or personnel to complete the Project, the Engineer will notify the Contractor and Owner, and a Project Meeting will be held within twenty-four (24) hours for the purpose of Contract termination, unless a reasonable cause is given to the contrary.

7.05 "OR EQUALS"

- A. Whenever an article, material, or item of equipment is described by a performance Specification, written as a proprietary product, or uses the name of a manufacturer or vendor, the term "or equal" if not inserted, is to be implied. The specific article, material, or item of equipment mentioned is to be understood as indicating the minimum requirements for fulfilling Contract obligations regarding type, function, standard of design and efficiency. See Section 09 97 13, Part 2, Substitutions, which is to govern over this clause where conflicting, relative to coatings, grouts, and fillers only. Other exceptions are when the Specifications state that only the proprietary item will be permitted.

7.11 LAWS AND REGULATIONS

- A. The Contractor is responsible for all permits and requirements of local, state, and federal agencies. This includes building, electrical, labor, OSHA, etc. The only permits not included are from health agencies for interior painting, cathodic protection installation and mixer installation which is the responsibility of the Owner.
- B. Display all wage requirements and other permits on a temporary board.
- C. Attach to the Superintendent's copy of the Specifications copies of other permits that do not require display.

7.13 SAFETY AND PROTECTION

- A. Conform to the Occupational Safety and Health Standards of the United States Department of Labor and local safety agencies. This is to be made a condition of each Subcontract as entered into pursuant to this Contract.

- B. Removal of heavy metal bearing paint and painting of structures is recognized as very dangerous Work, and it is further recognized the painting industry has extensive safety training programs available.
- C. The Contractor is to designate a qualified and experienced safety representative at the Site whose duties and responsibilities are to be the prevention of accidents and the maintaining and supervising of safety precautions and programs. Contractor's Safety Representative is to have the authority to supersede Contractor's foreman and is to stop Work if the Work being completed is in violation of Contractor's or Owner's safety program, or OSHA regulations.
- D. Monitor and be responsible for all safety practices.
- E. The Engineer and Owner are to have full access to the Site. The Contractor is to make personnel and equipment available to the Owner and Engineer/RPR to expedite observations.
- F. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.
- G. The Contractor is responsible for security, safety, etc. on the Site until all their equipment is removed and all keys are returned.

7.16 SUBMITTALS

- A. A sample of the Owner's/Engineer's Submittal Checklist is included as an attachment. The checklist is intended for Engineers' use but is included as a reference for the Contractor. Contractor submittals are to include all items requested in the Technical Specifications whether listed in the Submittal Checklist or not.
- B. All submittals are to be sent to the Owner as one package (unless a separate Schedule of Submittals is included and approved by the Engineer). All required resubmittals are also to be resubmitted as one package, and any delinquent resubmittal must be identified by a new Schedule of Submittals. Failure to include a Schedule of Submittals for delinquent items will be justification by Engineer to consider submittal incomplete. Delinquent items will be considered reviewed and rejected.

7.17 CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE

- A. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, or a release of the Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's Warranty and guarantee rights:
 - 1. Observations and/or Daily Observation Reports by Engineer/RPR.
 - 2. Recommendation by Engineer or payment by Owner of any Progress or Final Payment.
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by the Owner.
 - 4. Use or occupancy of the Work or any part thereof by the Owner.
 - 5. Any review and approval of a Shop Drawing or Sample submittal.
 - 6. The issuance of a Notice of Acceptability by the Engineer.
 - 7. The end of the correction period.
 - 8. Any inspection, test, or approval by others.
 - 9. Any correction of defective Work by Owner.

7.19 DELEGATION OF PROFESSIONAL DESIGN SERVICES

- A. If the Contract Documents note, or Contractor determines, that Professional Engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor is to cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

ARTICLE 10 ENGINEER'S STATUS DURING CONSTRUCTION

10.07 LIMITATIONS ON ENGINEER'S AUTHORITY AND RESPONSIBILITIES

A. Engineer's Responsibilities

1. Engineer will be Owner's representative during the construction period.
2. Engineer's Project Manager (PM) will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, the Engineer, for the benefit of the Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and observations, the Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
3. The Engineer will identify all Set-off expenses incurred against Engineer in their invoice to Owner.
4. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

B. The Resident Project Representative's (RPR) Responsibilities

1. If the Owner retains Engineer to provide RPR services, the RPR will be Engineer's representative at the Site to assist in observing the progress and quality of the Work. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of the Contractor. The authority of any RPR will be as directed by the Engineer.
2. Neither Engineer's authority or responsibility under any provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in Contract, tort, or otherwise owed

by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them. No Agreement between the Owner and Engineer and nothing in this Contract is to imply or construct a third-party beneficiary status to the Contractor.

- C. Engineer/RPR is to have the authority to stop Work in the event continuation of Work under a noncompliance situation, such as incomplete containment, may result in the violation of environmental laws, create a potential tort, or may result in the covering of defective or unaccepted Work (Nonconformance) product. This authority to stop work transfers back to the Owner after the Owner has been notified and returns to the Site.

ARTICLE 11 CHANGES TO THE CONTRACT

11.02 CHANGE ORDERS

- A. A Change Order is a written order to the Contractor signed by the Owner, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract sum or the Contract time. The cost or credit to the Owner resulting from a change in the Work is to be determined in one or more of the following ways:
 - 1. By mutual acceptance of a lump sum.
 - 2. By unit prices stated in the Contract Documents or subsequently agreed upon.
 - 3. By actual itemized cost and fixed fees as set forth in 2 above. Cost is to be limited to the following: cost of materials, cost of labor, and cost of overhead.
- B. A Bulletin will be issued in most cases before a Change Order. A Bulletin will request prices and other information from the Contractor. Prices requested in a Bulletin are subject to negotiation with the Owner.

11.04 FIELD ORDERS

- A. A Field Order is written by the Engineer to the Contractor for purposes of clarification of the Specifications or plans. A Field Order is limited to items that do not change the scope of the Project.
- B. Field Orders do not affect either the Project cost or completion date.
- C. Field Orders become part of the Contract Documents and become binding upon the Contractor if they fail to object within three (3) working days after receiving the modification. A Field Order may be used as the basis of a Project cost change or Contract extension if all parties agree on the Field Order form to a potential future claim of either party or that the Field Order will be complied with, but under protest.

ARTICLE 15 PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 AND 15.06 PROGRESS AND FINAL PAYMENTS

- A. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

- B. Measurement of payment will be considered based on the Schedule of Values submitted with the Contractor's bid. The Schedule of Values will be reviewed by the Engineer prior to the Notice of Award. If the Engineer determines the Schedule of Values is not acceptable, the Engineer will use the Contractor's Schedule to reallocate values. The Engineer's reallocation interest will be to maintain a sufficient value for Work completed toward the end of the Project, to avoid frontloading values. The Engineer will assign values high enough to bring in another Contractor to finish Work in case of default. When evaluating the Schedule of Values, the Engineer will consider that material delivered to the Site has no value until properly applied. The Contractor has five (5) days to appeal the reallocated Schedule of Values.
- C. Pay Request(s) is to be made on form(s) supplied by the Owner or Engineer or required by Owner. If no form is supplied, use AIA form.
- D. The Owner will make Progress Payments once each month during the performance of the Work, in which the Contractor files an application for payment.
1. All such payments will be compared with the Schedule of Values,
 2. Or in the case of unit price Work, based on the number of units completed, or
 3. If the lump sum item is less than 100% completed, then allocated as follows:
 - a. On the exterior, surface preparation by high pressure cleaning or jetting and power tool cleaning will be considered equal to 40% of the Line Item Work and cost and full coat 15%. The remainder will be for lettering, demobilization, and clean-up.
 - b. Dry interior painting, piping repainting, and repairs will not be broken down. 100% completion is required before they will be considered for payment.
 - c. Mobilization is included in the surface preparation allotment for items in Part 3 above.
 4. Owner is entitled to impose a Set-off or withholding against payment based on any of the following:
 - a. Third party claims have been made or there is reasonable evidence indicating probable filing of claims against Owner on account of Contractor's conduct in the performance or furnishing of the Work.
 - b. Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from Workplace injuries, adjacent property damage, non-compliance with Laws and Regulations (Special Damages, see Article 18 below), and patent infringement.
 - c. Damage caused by the Contractor to the Owner or to another Site approved Contractor.
 - d. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other Work at or adjacent to the Site.
 - e. An event that would constitute a default by Contractor and therefore justify a termination for cause or.
 - f. Defective Work not remedied:
 - i. requiring correction or replacement including additional inspection costs
 - ii. requiring correction or replacement
 - iii. Owner has been required to correct defective Work or
 - iv. has accepted defective Work.
 - g. Persistent failure to carry out the Work in accordance with the Contract Documents.

- h. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is Contractually responsible or responsible for creating the condition.
 - i. The Contract Price has been reduced by Change Orders.
 - j. Failure of the Contractor to make payments properly to Subcontractors, or for labor, materials, or equipment.
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens.
 - l. Liquidated Damages have been accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or Ready for Final Payment.
 - m. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract sum, or within the Contract time.
 - n. The Contractor has failed to provide and maintain required bonds or insurance.
 - o. The Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.
 - p. The Owner has incurred extra charges or Engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to complete field observations that were determined to be failed.
 - q. Other items entitling Owner to a Set-off against Payment.
 - r. The Owner may also decline to make payment including an item previously approved for payment, because of subsequently discovered evidence or subsequent observations, as may be necessary in their opinion to protect against loss by Set-off amount previously recommended
5. If the Owner imposes any Set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, the Owner will give the Contractor immediate notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay the Contractor any amount remaining after deduction of the amount so withheld. The Owner is to promptly pay the Contractor the amount so withheld, or any adjustment agreed to by the Owner and the Contractor, if the Contractor remedies the reasons for such action.
- a. The reduction imposed is to be binding on Contractor unless Contractor duly submits a Change Proposal contesting the reduction.
 - b. The Engineer will recommend reductions in payment (Set-off) necessary in Engineer's opinion to protect Owner from loss.
6. Owner may decide against Set-off as a remedy, but in so doing, Owner does not waive any remaining remedies.
7. Neither the Owner nor the Engineer are under any requirements or obligations to notify the bonding company at Project Conclusion of Set-off or other remedies chosen.
8. If the Owner/Engineer prepares an accounting Change Order at Project Conclusion it will be considered signed by Contractor, unless the Contractor files a Change Proposal within five days protesting the Set-off. If the appeal is rejected, the Change Order will be considered signed unless further appeals per the appeals process are claimed.

15.08 CORRECTION PERIOD

- A. Within thirteen (13) months from the date of Substantial Completion, the structure will be inspected by the Owner and/or their representative.
- B. The inspection will be performed in accordance with the applicable portions of AWWA D-102 Standard for Painting Steel Water Storage Tanks and industry standards.
- C. The Owner will establish a date of inspection and may or may not notify the Contractor in advance. The Contractor's attendance will not be required.
- D. The Owner will select a third-party inspection firm (either Engineer or Project Representative) to document inspection.
- E. Any failed Work will be documented, and the Contractor will be notified of necessary repair (method and extent). The Owner reserves the right to require inspection of the repair Work and possibly a second Warranty Inspection, dependent on degree of failure.
- F. This Warranty will automatically be extended until the structure is ice-free (if applicable) and the Warranty Inspection can be performed. The Contractor guarantees that the system is free from defects due to faulty materials or workmanship and the Contractor is to make the necessary corrections to correct these defects. If the amount of rework exceeds ten percent (10%) of a portion of the Project, then the Owner reserves the right to have the Warranty period extended by one (1) year for the entire portion of the Work.
- G. The cost for one (1) year Warranty Inspection will be the responsibility of the Owner.
- H. Cost for a second Warranty Inspection and repair inspections will be the responsibility of the Contractor and guaranteed by Contractor's Performance and Maintenance Bond (see Article 6).
- I. The Owner retains all Contractual remedies. The Warranty is not to be considered an exclusive remedy.
- J. If the Owner conditionally accepts Work which was observed or found to be in noncompliance, then the Owner has the right to withhold from final payment an amount equal to the cost to redo the Work if it fails the subsequent Warranty Observation, as well as an additional amount for additional Engineering services.
- K. The Contractor is to pay for additional expenses for RPR or Engineering or other Owner related expenses resulting from the failed Warranty. The Maintenance Bond is to remain in full effect, but the Engineer will notify the Contractor first. Failure to respond positively within two weeks will trigger notification and claim to bonding company.

ARTICLE 16 SUSPENSION OF WORK AND TERMINATION

16.02 AND 16.03 TERMINATION for CAUSE AND FOR CONVENIENCE

- A. The Owner may terminate the Contract when the approved Progress Schedule is not met because of the failure of the Contractor to exercise diligence and effectively perform all required Work, or when the progress of the Work is unacceptable to the Owner.
- B. In the absence of a Project Progress Schedule, the determination regarding the Contractor's diligence will be based on the Engineer's opinion, correspondence, and Field Reports.
- C. The Owner may terminate the Contract, when in the opinion of the Engineer, the Non-conformance report(s) indicate the Contractor is unable or unwilling to complete the Contract within the terms of the Contract.

ARTICLE 18 MISCELLANEOUS

18.02 LIMITATION OF DAMAGES

- A. Contractor is to reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for Engineering, construction observation, inspection, and administrative services needed after the time specified in the Project Summary for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor is to neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor is to reimburse Owner for the actual costs reasonably incurred by Owner for Engineering, construction observation, inspection, and administrative services needed after the time specified for the Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), and if necessary to hire other Contractors to complete portions of the Work, until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any Liquidated Damages for delayed completion established in this Agreement.