

## SECTION 01 26 00

### CONTRACT MODIFICATION PROCEDURES



#### PART 1 GENERAL

##### 1.01 SECTION INCLUDES

- A. OWNER may at any time, as the need arises, order changes within the scope of the WORK without invalidating the AGREEMENT. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or the time required for performance of the WORK, an equitable adjustment will be authorized by CHANGE ORDER.
- B. Under no circumstances shall OWNER be liable for any extra WORK that has not been authorized by a properly executed CHANGE ORDER.

##### 1.02 CHANGE ORDERS

- A. Changes in CONTRACT TIME: The CONTRACT TIME may be changed only by a CHANGE ORDER. Changed conditions, CHANGE ORDERS reflected authorized changes in the WORK, abnormal or unusual weather conditions, labor strikes, and delays caused by various governmental activities, or defined in Section 01 32 13, Scheduling of Work, may be the basis for extending the period for performance. Because these various reasons for delay can have cumulative effect or actually have no effect, CONTRACTOR shall request, in writing, as defined in Section 01 32 13, Scheduling of Work, on a monthly basis, time extensions and to discuss these requests with ENGINEER to determine whether or not a time extension can be recommended. Should a time extension be granted by OWNER, a CHANGE ORDER, signed by OWNER, will be issued to indicate the new date for completion.
  1. Notwithstanding the foregoing, CONTRACTOR agrees to make no claim for monetary compensation for delay in the performance of this WORK except if such delay is caused in whole, or in part, by acts or omissions within the control of OWNER or persons acting on behalf of OWNER. If no claim for monetary damages is permitted under this paragraph, CONTRACTOR agrees that any other claim submitted to OWNER for delay shall be fully compensated for by an extension of time to complete performance of the WORK as specified above.
    - a. For purposes of this section, the words "persons acting on behalf of OWNER" do not include utility companies, including but not limited to, companies associated in any way with telephone, telegraph, gas, electricity, water, sewer, and cable television.
  2. If, as a result of delay, CONTRACTOR wishes to make a claim for either monetary compensation or an extension of time, CONTRACTOR must submit that claim to OWNER in writing within thirty (30) days of the occurrence of the incident that CONTRACTOR believes entitled CONTRACTOR to that monetary compensation or extension of time. If CONTRACTOR fails to make the claim within the time provided, CONTRACTOR will be deemed to have waived that claim.



3. The following specifies the procedure for the determination of time extensions for unusually severe weather. The listing below defines the anticipated number of calendar days lost to adverse weather for each month and is based upon National Oceanic and Atmospheric Administration (NOAA) or similar data for the geographic location of the PROJECT.

- a. Monthly anticipated calendar days lost to adverse weather conditions:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
(7)	(4)	(4)	(4)	(6)	(3)	(4)	(2)	(3)	(3)	(4)	(5)

- b. The above schedule of anticipated adverse weather will constitute the base line for monthly (or portion thereof) weather time evaluations. Upon acknowledgment of the NOTICE TO PROCEED and continuing throughout the CONTRACT on a monthly basis, actual adverse weather days and the impact of adverse weather days, which delay the WORK, will be recorded on a day-to-day basis. It is assumed that the WORK will be carried out Mondays through Fridays (holidays excepted) unless an approved construction schedule or written authorization from OWNER indicates otherwise. The number of calendar days of delayed WORK as a result of adverse weather or the impact thereof will then be compared to the monthly adverse weather schedule above.
- c. An actual adverse weather day must prevent WORK for 50 percent or more of CONTRACTOR's workday, delay WORK critical to the timely completion of the PROJECT, and be documented by CONTRACTOR. OWNER's representative observing the construction shall determine on a daily basis whether or not WORK can proceed or if WORK is delayed because of adverse weather or the effects thereof. CONTRACTOR shall notify OWNER's representative in writing of any disagreement as to whether or not WORK can proceed on a given date, within two (2) calendar days of that date. OWNER shall use the above written notification in determining the number of calendar days for which WORK was delayed during each month.
- 1) At the end of each month, if the number of calendar days for which WORK was delayed because of adverse weather exceeds that shown in the above schedule, a CHANGE ORDER will be executed which increases the CONTRACT TIME. A calendar-day CONTRACT assumes a 7-day work week, Monday through Sunday, including holidays.
  - 2) While extensions of time will be granted for "unusually severe" weather or climate conditions, or the impact thereof, OWNER shall make no monetary compensation for any costs to CONTRACTOR arising out of such delays. CONTRACTOR shall comply with the portions of these CONTRACT DOCUMENTS relating to the PROJECT schedule and amendments thereto which result from the "unusually severe" weather condition.

- B. Changes in CONTRACT PRICE: The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or



of any claim for increase or decrease in the CONTRACT PRICE will be determined by one or more of the following methods in the order of precedence listed below:

1. Unit prices previously approved as detailed in the subsection entitled “Unit Price Contracts” below.
2. A lump sum that has been agreed to by CONTRACTOR and OWNER.
3. The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the WORK.
  - a. All rates for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the WORK are to be approved in writing by OWNER or OWNER’s representative, before execution of the CHANGE ORDER.
  - b. In addition, there will be an added amount to be agreed upon but not to exceed a total of fifteen (15) percent of the actual cost of the WORK to cover the cost of general overhead and profit as detailed in the subsection below entitled “Cost Adjustment for Change.”
4. Agreed Unit Prices, not being CONTRACT Unit Prices.

C. Unit Price Contracts:

1. If payment for the major part of the WORK done under the CONTRACT is based on specially-identified units of construction rather than on a lump sum price, the CONTRACT will be known as a unit price contract.
2. In the case of a unit price contract, the number of units of specific type as set forth in the BID may vary from the number of units actually measured when the WORK has been completed. Should the installed number of units of any one unit designation vary by more than twenty five (25) percent from the number originally stated in the BID for that designation, and should this difference change the total CONTRACT value as originally BID by more than five (5) percent, CONTRACTOR or OWNER may request that the unit price of that particular unit designation be re-negotiated.
3. Unlike the lump sum contract, CHANGE ORDERS are not necessary when the number of actual units installed is either less or more than indicated in the CONTRACT DOCUMENTS. A CHANGE ORDER will be issued if a unit price adjustment has been agreed upon.

### 1.03 COST OF THE WORK

- A. Cost Adjustment for Change: The term “Cost of the WORK” means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the WORK. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the PROJECT,



shall include only the items listed below, and shall not include any of the costs itemized in the subsection below entitled "Unallowable Costs":

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the WORK under schedules of job classifications agreed upon by OWNER and CONTRACTOR.
  - a. Payroll costs for employees not employed full time on the WORK shall be apportioned on the basis of their time spent on the WORK.
  - b. Payroll costs will include, but not be limited to, salaries and wages plus the cost of fringe benefits, which will include social security contributions, unemployment, excise and payroll taxes, workers or workers' compensation, health, and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site.
  - c. The expenses of performing WORK after regular working hours, on Sunday, or legal holidays shall be included in the above to the extent authorized by OWNER.
2. Cost of all materials and equipment furnished and incorporated in the WORK, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith.
  - a. All cash discounts shall accrue to CONTRACTOR, unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER.
  - b. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.
3. Payments made by CONTRACTOR to the SUBCONTRACTOR(s) for WORK performed.
  - a. If required by OWNER, CONTRACTOR shall obtain competitive BIDS from SUBCONTRACTOR(s) acceptable to CONTRACTOR and shall deliver such BIDS to OWNER who will then determine, with the advice of ENGINEER, which BIDS will be accepted.
  - b. If a subcontract provides that the SUBCONTRACTOR is to be paid on the basis of Cost of the WORK Plus a Fee, the SUBCONTRACTOR's Cost of the WORK shall be determined in the same manner as CONTRACTOR's Cost of the WORK.
  - c. All subcontracts will be subject to the other provisions of the CONTRACT DOCUMENTS insofar as applicable.
4. Costs of special outside services (including, but not limited to, engineers, architects, testing laboratories, surveyors, lawyers, and accountants) employed for services specifically related to the WORK.



5. Supplemental Costs:

- a. The portion of necessary transportation and travel expenses of CONTRACTOR's employees incurred in discharge of duties connected with the WORK.
- b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site, and hand tools not owned by the workers, which are used or consumed in the performance of the WORK, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.
- c. Rentals of all construction equipment and machinery and the parts thereof, whether rented from CONTRACTOR or others, in accordance with rental agreements approved by OWNER or ENGINEER, not to exceed current Colorado Department of Transportation values per the Rental Rate Blue Book, and the costs of transportation, loading, unloading, installation, dismantling, and removal thereof-all in accordance with terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the WORK.
- d. Sales, use, or similar taxes related to the WORK, and for which CONTRACTOR is liable, imposed by any governmental authority.
- e. Deposits lost for causes other than CONTRACTOR's negligence, royalty payments, and fees for PERMITS and licenses.
- f. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the WORK or otherwise sustained by CONTRACTOR in connection with the execution of the WORK, provided they have resulted from causes other than the negligence of CONTRACTOR, any SUBCONTRACTOR, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER or ENGINEER. No such losses, damages, and expenses shall be included in the Cost of the WORK for the purpose of determining CONTRACTOR's fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR will be paid for services a fee proportionate to that stated in the subsection below entitled "CONTRACTOR's Fee."
- g. The cost of utilities, fuel, and sanitary facilities at the site.
- h. Minor expenses such as long distance telephone calls, telephone service at the site, and similar petty cash items in connection with the WORK.
- i. Cost of premiums for additional BONDS and insurance required because of changes in the WORK.



B. Unallowable Costs:

1. The Cost of the WORK will not include any of the following:
  - a. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by CONTRACTOR whether at the site or in the CONTRACTOR's principal or branch office for general administration of the WORK and not specifically included in the agreed upon schedule of job classifications referred to in the subsection above entitled "Cost Adjustment for Change" above—all of which are to be considered administrative costs covered by the CONTRACTOR's fee.
  - b. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.
  - c. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the WORK and charges against CONTRACTOR for delinquent payments.
  - d. Cost of premiums for all BOND(s) and for all insurance whether or not CONTRACTOR is required by the CONTRACT DOCUMENTS to purchase and maintain the same (except for additional BOND(s) and insurance required because of changes in the WORK).
  - e. Costs because of negligence of CONTRACTOR, any SUBCONTRACTOR, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective WORK, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  - f. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in subsection above entitled "Cost Adjustment for Change."

C. CONTRACTOR's Fee:

1. Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:
  - a. A mutually acceptable fixed fee; or
  - b. If none can be agreed upon, a fee based on the following percentages of the various portions of the Cost of the WORK:
    - 1) For payroll and material costs incurred under the subsection above entitled "Cost Adjustment for Change," CONTRACTOR's fee shall be fifteen (15) percent.
    - 2) For equipment rental costs incurred under the subsection above entitled "Cost Adjustment for Change," the CONTRACTOR's fee will be five (5) percent and, if a subcontract is on the basis of Cost of the



- WORK plus a fee, the maximum allowable to the SUBCONTRACTOR as a fee for overhead and profit will be fifteen (15) percent.
- 3) No fee will be payable for taxes, lost deposits, or non-insured losses, on the basis of costs itemized under the subsection above entitled "Cost Adjustment for Change".
  2. The amount of credit to be allowed by CONTRACTOR to OWNER for any such change that results in a net decrease in cost shall be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any.

#### 1.04 FIELD ORDER

- A. ENGINEER may at any time issue a FIELD ORDER to make changes in the details of the WORK.
- B. CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by ENGINEER, unless CONTRACTOR believes that such FIELD ORDER entitles CONTRACTOR to an increase or decrease in CONTRACT PRICE or CONTRACT TIME, or both, in which event CONTRACTOR shall give ENGINEER and OWNER WRITTEN NOTICE thereof within seven (7) days after the receipt of the FIELD ORDER.
- C. Thereafter, CONTRACTOR shall document the basis for the change in CONTRACT PRICE or CONTRACT TIME within seven (7) days. CONTRACTOR shall not execute such changes pending receipt of an executed CHANGE ORDER or further instruction from OWNER.

#### PART 2 PRODUCTS (NOT APPLICABLE)

#### PART 3 EXECUTION (NOT APPLICABLE)

**END OF SECTION**



Revised 08/2015

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