

Pricing of Construction Contract Change Order Documentation

The contract language contained in this Exhibit will supplement and take precedence over all other change order pricing contract provisions in the Contract Documents provided by the Owner, Design-Builder (Contractor), Construction Manager (Contractor), General Contractor (Contractor) and/or Architect/Engineer. It is understood that these contract provisions will govern the pricing and administration of all change order proposals to be submitted by the Construction Manager and/or the General Contractor and/or the Trade Contractors and/or the Subcontractors and/or all other lower tier sub-subcontractors (all referred to as "Contractor" in this Exhibit). In the event of a conflict between the other Contract Documents used for the Project, the change order pricing contract provisions in this Exhibit shall govern.

Contractor agrees that it will incorporate the provisions of this Exhibit into all agreements with lower tier Contractors. It is understood that these change order pricing provisions apply to all types of contracts and/or subcontracts specifically including lump sum (or fixed price contracts), unit price contracts, and/or cost plus contracts with or without a guaranteed maximum. It is further understood that these change order provisions will apply to all methods of change order pricing specifically including lump sum change order proposals, unit price change order proposals, and cost plus change order proposals.

Whenever change order proposals to adjust the contract price become necessary, the Owner will have the right to select the method of pricing to be used by the Contractor in accordance with the pricing provisions found in this Exhibit. The options will be (1) lump sum change order proposal, (2) unit price change order proposal, or (3) cost plus change order proposal as defined in the following provisions.

- 1.1 Lump Sum Change Order Proposals:** The Contractor will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format satisfactory to Owner. The Owner will require itemized change orders on all change order proposals from the Contractor, subcontractors, and sub-subcontractors regardless of tier. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable.)
- 1.2 Labor:** Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the Contractor for those workers or crews of workers who the contractor reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the Markup Percentages as outlined in paragraphs 1.6 and 1.7 of this Exhibit. Note: No separate allowances for warranty expense will be allowed as a direct cost of a change order. Costs attributed to warranty expenses will be considered to be covered by the Markup Percentages as outlined in paragraphs 1.6 and 1.7 of this Exhibit.
- 1.3 Labor Burden:** Labor burden allowable in change orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. (An estimated percentage for labor burden may be used for pricing change orders. However, the percentage used for labor burden to price change orders will be examined at the conclusion of the project and an adjustment to the approved change orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used.)

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- 1.4 Material:** Estimated material change order costs shall reflect the Contractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the Contractor due to "non-Cash" discounts, trade discounts, free material credits, and/or volume rebates. "Cash" discounts (i.e. prompt payment discounts of 2% or less) available on material purchased for change order work shall be credited to Owner if the Contractor is provided Owner funds in time for Contractor to take advantage of any such "cash" discounts. The portion of any "Cash" discounts greater than 2% will not be considered "non-Cash" discount for purposes of this contract clause. Price quotations from material suppliers must be itemized with unit prices for each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.
- 1.5 Equipment:** Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than \$750). For contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book divided by 176 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for contractor owned equipment the aggregate equipment rent charges for any single piece of equipment used in all change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.
- 1.6 Maximum Markup Percentage Allowable on Self-Performed Work:** With respect to pricing change orders, the maximum Markup Percentage Fee to be paid to any Contractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed ten percent (10%) of the net direct cost of (1) direct labor and allowable labor burden costs applicable to the change order or extra work; (2) the net cost of material and installed equipment incorporated into the change or extra work, and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work.
- The markup computed using the above formula shall be considered to be allocated 2/3 to cover applicable overhead costs directly attributable to the field overhead costs related to processing, supervising and performing, the change order work, and the remaining 1/3 to cover home office overhead costs and profit.
- 1.7 Maximum Markup Percentages Allowable on Work Performed by Lower Tier Contractors:** With respect to pricing the portion of change order proposals involving work performed by lower tier contractors, the maximum Markup Percentage Fee allowable to the Contractor supervising the lower tier contractor's work shall not exceed five percent (5%) of the net of all approved change order work performed by all subcontractors combined for any particular change order proposal.
- The markup computed using the above formula shall be considered to be allocated 2/3 to cover applicable overhead costs directly attributable to the field overhead costs related to processing, supervising and performing the change order work, and the remaining 1/3 to cover home office overhead costs and profit.
- 1.8 No Markup on Bonds and Liability Insurance Costs:** Change Order cost adjustments due increases or decreases in bond or insurance costs (if applicable) shall not be subject to any Markup Percentage Fee.

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- 1.9 Direct and Indirect Costs Covered by Markup Percentages:** As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the Contractor's profit and all indirect costs associated with the change order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; estimating, engineering; coordinating; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; auto insurance and umbrella insurance; pick-up truck costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than \$750.
- 1.10 Deduct Change Orders and Net Deduct Changes:** The application of the markup percentages referenced in the preceding paragraphs 1.6 and 1.7 will apply to both additive and deductive change orders. In the case of a deductive change order, the credit will be computed by applying the sliding scale percentages as outlined in paragraphs 1.6 and 1.7 so that a deductive change order would be computed in the same manner as an additive change order. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net amount.
- 1.11 Contingency:** In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated performing the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.
- 1.12 Change Order Proposal Time and Change Directives:** The Contractor's proposals for changes in the contract amount or time shall be submitted within seven (7) calendar days of the Owner's request, unless the Owner extends such period of time due to the circumstances involved. If such proposals are not received in a timely manner, if the proposals are not acceptable to Owner, or if the changed work should be started immediately to avoid damage to the project or costly delay, the Owner may direct the Contractor to proceed with the changes without waiting for the Contractor's proposal or for the formal change order to be issued. In the case of an unacceptable Contractor proposal, the Owner may direct the Contractor to proceed with the changed work on a cost-plus basis with an agreed upon "not-to-exceed" price for the work to be performed. Such directions to the Contractor by the Owner shall be confirmed in writing by a "Notice to Proceed on Changes" letter within seven (7) calendar days. The cost or credit, and or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Contract.
- 1.13 Liability Insurance and Bonds:** In the event the Contractor has been required to furnish comprehensive general liability insurance and/or performance and/or payment bonds as part of the base contract price, a final contract change order will be processed to account for the Contractor's net increase or decrease in comprehensive general liability insurance costs and/or bond premium costs associated with change orders to Contractor's base contract price.
- 1.14 Cost Plus Fee Agreements:** In those contract situations where the Contractor (Design-Builder, Construction Manager, General Contractor, Prime Contractor, Trade Contractor, Subcontractor or Sub-subcontractor) has entered into a cost plus fee with a guaranteed maximum contract arrangement where the basis of compensation is reimbursement for defined "Cost of the Work" plus either a stated percentage fee or fixed fee subject to an agreed upon contract guaranteed maximum price, the Contractor's total percentage fee or fixed fee to be paid under the terms of cost plus contract agreement shall be adjusted either upward or downward by the same percentage stated in the applicable portion of the cost plus fee agreement. The percentage markups to be applied for the pricing of change orders which will increase or decrease the contract guaranteed maximum price will be the percentages outlined in paragraphs 1.6 and 1.7 of this Contract Exhibit.

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However, those percentage markups which are intended to cover field overhead and certain other direct costs attributable to the change order work will not apply to adjustments in the total adjusted fee payable to the Contractor under the cost plus fee portion of the contract agreement.

Cost Plus Fee Agreements (continued): For example, if the contract utilizes a Fixed Fee, the base contract Fixed Fee will be adjusted by 1/3 of the net percentage markups included in all approved change orders. The remaining 2/3 of the net markups on approved change orders will be considered an adjustment to the Contractor's general conditions budget.

- 2.1 Unit Price Change Order Proposals:** As an alternative to Lump Sum Change Order Proposals, the Owner or the Contractor (Design-Builder, Construction Manager, General Contractor) acting with the approval of the Owner may choose the option to use Contract Unit Prices. Agreed upon Contract Unit Prices shall be the same for added quantities and deductive quantities. Unit Prices are not required to be used for pricing change orders where other methods of pricing change order work are more equitable.
- 2.2** The Contractor will submit, within seven (7) days after receipt of the Owner's written request for a Unit Price Proposal, a written Unit Price proposal itemizing the quantities of each item of work for which there is an applicable Contract Unit Price. The quantities must be itemized in relation to each specific contract drawing.
- 2.3** Contract Unit Prices will be applied to net differences of quantities of the same item. Such Contract Unit Prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the subcontractor's Markup Percentage Fee.
- 3.1 Cost Plus Change Order Proposals:** As an alternative to either Lump Sum Change Order Proposals or Unit Price Change Order Proposals, the Owner may elect to have any extra work performed on a cost plus markup percentage fee basis. Upon written notice to proceed, the Contractor shall perform such authorized extra work at actual cost for direct labor (working foremen, journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendent of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plant) plus the approved Markup Percentage Fee. The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing Lump Sum Change Proposals as outlined in subparagraphs 1.1 through 1.13 above. Owner and Contractor may agree in advance in writing on a maximum price for this work and Owner shall not be liable for any charge in excess of the maximum. Daily time sheets with names of all Contractor's employees working on the project will be required to be submitted to the Owner for both labor and equipment used by the Contractor for time periods during which extra work is performed on a cost plus fee basis. Daily time sheets will break down the paid hours worked by the Contractor's employees showing both base contract work as well as extra work performed by each employee.
- 4.1 Accurate Change Order Pricing Information:** Contractor, subcontractor or sub-subcontractor agrees that it is responsible for submitting accurate cost and pricing data to support its Lump Sum Change and/or Cost Plus Change Order Proposals or other contract price adjustments under the contract. Contractor further agrees to submit change order proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the contract with respect to pricing of change orders.
- 4.2 Right to Verify Change Order Pricing Information:** Contractor, subcontractor and sub-subcontractor agrees that any designated Owner's representative will have the right to examine (copy or scan) the records of the Contractor, subcontractor or sub-sub contractor's records (during the contract period and up to three years after final payment is made on the contract) to verify the

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accuracy and appropriateness of the pricing data used to price all change order proposals and/or claims. Contractor agrees that if the Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the contract regarding pricing of change orders, an appropriate contract price adjustment will be made. Such post-approval contract price adjustments will apply to all levels of contractors and/or subcontractors and to all types of change order proposals specifically including lump sum change orders, unit price change orders, and cost-plus change orders.

- 4.3 Requirements for Detailed Change Order Pricing Information:** Contractor and subcontractor agree to provide and require all Subcontractors and sub-subcontractors to provide a breakdown of allowable labor and labor burden cost information as outlined in this Exhibit. This information will be used to evaluate the potential cost of labor and labor burden related to change order work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. This information is not intended to establish fixed billing or change order pricing labor rates. However, at the time change orders are priced, the submitted cost data for labor rates may be used to price change order work. The accuracy of any such agreed upon labor cost components used to price change orders will be subject to later audit. Approved change order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.