

SECTION 01 26 00

CONTRACT MODIFICATION PROCEDURES

PART 1 - GENERAL

1.1 GENERAL

- A. Only Contractor or City may initiate changes in scope of Work or deviation from Contract Documents.
1. Contractor may initiate changes by submitting a Request for Information (RFI), Notice of Concealed or Unknown Conditions, or Notice of Hazardous Waste Conditions.
 - a. RFIs shall be submitted to seek clarification of or request changes in the Contract Documents.
 - b. Notices of Concealed or Unknown Conditions shall be submitted in accordance with Document 00 72 00 (General Conditions).
 - c. Notices of Hazardous Waste Conditions shall be submitted in accordance with Document 00 72 00 (General Conditions).
 2. City may initiate changes by issuing a Supplemental Instruction, which may revise, add to or subtract from the Work.
 3. City may initiate changes in the Work or Contract Time by issuing a Request for Quotation (RFQ) to Contractor. Such RFQ will detail all proposed changes in the Work and request a quotation of changes in Contract Sum and Contract Time from Contractor.
 4. City may also, by Construction Change Directive (CCD), order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly. A CCD shall be used in the absence of total agreement on the terms of a Change Order and may, upon notice, consist of a Change Order executed by City only.

1.2 PROCEDURES

- A. Cost Quotation and Procedures: Whenever Contractor is required in this Section to prepare a cost quotation, and whenever Contractor is entitled to submit a cost quotation and elects to do so, Contractor shall prepare and submit to City for consideration a cost quotation using the form attached to this Section. All cost quotations must contain a complete breakdown of actual, current costs of credits, deducts, and extras; and itemizing materials, labor, taxes, overhead and profit. All Subcontractor Work shall be so indicated. Individual entries on the Cost Quotation Form shall be determined as provided in this Section. After receipt of a cost quotation with a detailed breakdown, City will act promptly thereon.

1. If City accepts a Cost Quotation, City will prepare Change Order for City and Contractor signatures.
 2. If the Cost Quotation is not acceptable to City because it does not agree with cost and/or time included in the Cost Quotation, City will submit in a response what it believes to be a reasonable cost and/or adjustment, if any. Except as otherwise provided in this Section, Contractor shall have 7 Days in which to respond to City with a revised Cost Quotation.
 3. When necessity to proceed with a change does not allow the City sufficient time to conduct a proper check of a Cost Quotation (or revised Cost Quotation), City may order Contractor to proceed on basis to be determined at earliest practical date. In this event, value of change, with corresponding equitable adjustment to Contract, shall not be more than increase or less than decrease proposed.
- B. Request for Information (RFI): Whenever Contractor requires information regarding the Project or Contract Documents, or receives RFI from a Subcontractor, Contractor may prepare and deliver an RFI to City. Contractor shall use RFI format provided by City. Contractor must submit time critical RFIs at least 30 Days before scheduled start date of the affected Work activity. Contractor shall reference each RFI to an activity of Progress Schedule and shall note time criticality of the RFI, indicating time within which a response is required. Contractor's failure to reference RFI to an activity on the Progress Schedule and note time criticality on the RFI shall constitute Contractor's waiver of any claim for time delay or interruption to the Work resulting from any delay in responding to the RFI.
1. City will respond within 7 Days from receipt of RFI with a written response to Contractor. Contractor shall distribute response to all appropriate Subcontractors.
 2. If Contractor is satisfied with the response and does not request a change in Contract Sum or Contract Time, then the response shall be executed without a change.
 3. If Contractor believes the response is incomplete, Contractor shall issue another RFI (with the same RFI number with the letter "A" indicating if it is a follow-up RFI) to City clarifying original RFI. Additionally, City may return RFI requesting additional information should original RFI be inadequate in describing condition.
 4. If Contractor believes that the response results in change in Contract Sum or Contract Time, Contractor shall notify City in writing within 7 Days after receiving the response. If City disagrees with Contractor, then Contractor may give notice of intent to submit a Claim as described in Article 12 of Document 00 72 00 (General Conditions), and submit its Claim within 30 Days. If City agrees with Contractor, then Contractor must submit a Cost Quotation within 7 Days of receiving the response to the RFI. Contractor's failure to deliver either the foregoing notice and

Claim or Cost Quotation by the respective deadlines stated in the foregoing sentences shall result in waiver of the right to file a Cost Quotation or Claim.

- C. Supplemental Instruction: City may issue Supplemental Instruction to Contractor.
1. If Contractor is satisfied with Supplemental Instruction and does not request a change in Contract Sum or Contract Time, then Supplemental Instruction shall be executed without a Change Order.
 2. If Contractor believes that Supplemental Instruction results in a change in Contract Sum or Contract Time, then Contractor must submit a Cost Quotation to City within 21 Days of receiving the Supplemental Instruction.
- D. City requested RFQ: Contractor shall furnish a Cost Quotation within 5 Business Days of City's RFQ. Upon approval of RFQ, City will issue a Change Order directing Contractor to proceed with extra Work. If the parties do not agree on the price for an RFQ, City may either issue a CCD or decide the issue per Article 12 of Document 00 72 00 (General Conditions). Contractor shall perform the changed Work notwithstanding any claims or disagreements of any nature.
- E. Construction Change Directives: If at any time City believes in good faith that a timely Change Order will not be agreed upon using the foregoing procedures, City may issue a CCD with its recommended cost and/or time adjustment. Upon receipt of CCD, Contractor shall promptly proceed with the change of Work involved and concurrently respond to City's CCD within 10 Days.
1. Contractor's response must be any one of following:
 - a. Return CCD signed, thereby accepting City's response, time, and cost.
 - b. Submit a (revised if applicable) Cost Quotation with supporting documentation (if applicable, reference original Cost Quotation number followed by letter A, B, etc. for each revision), if City so requests.
 - c. Give notice of intent to submit a Claim as described in Article 12 of Document 00 72 00 (General Conditions), and submit its Claim within 30 Days.
 2. If the CCD provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
 - a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
 - b. Unit prices stated in the Contract Documents or subsequently agreed upon.
 - d. Cost to be determined in a manner agreed.
 3. CCD signed by Contractor indicates the agreement of Contractor therewith, including adjustment in Contract Sum and Contract Time or

the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

4. If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by City on the basis of reasonable expenditures and savings of those performing the Work attributable to the change including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. If the parties still do not agree on the price for a CCD, Contractor may file a Claim per Article 12 of Document 00 72 00 (General Conditions). Contractor shall keep and present, in such form as City may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this paragraph shall be limited to those provided in this Section.
 5. Pending final determination of cost to City, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by Contractor to City for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by City. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
- F. Differing Site Conditions: Contractor shall submit Notices of Differing Site Conditions to resolve problems regarding differing underground Site conditions encountered in the execution of the Work pursuant to Paragraph 13.4 of Document 00 72 00 (General Conditions), which shall govern. If City determines that a change in Contract Sum or Contract Time is justified, City will issue RFQ or CCD.
- G. Hazardous Waste Conditions: Contractor shall submit Notices of Hazardous Waste Conditions to resolve problems regarding hazardous materials encountered in the execution of the Work pursuant to Paragraph 13.5 of Document 00 72 00 (General Conditions), which shall govern. If City determines that a change in Contract Sum or Contract Time is justified, City will issue RFQ or CCD.

1.3 COST DETERMINATION

- A. Total cost of extra Work or of Work omitted shall be the sum of labor costs, material costs, equipment rental costs, and specialist costs as defined herein plus overhead and profit as allowed herein. This limit applies in all cases of claims for extra Work, whether calculating cost quotation, change orders or CCDs, or calculating claims of all types, and applies even in the event of fault, negligence, strict liability, or tort claims of all kinds, including strict liability or negligence. Contractor may recover no other costs arising out of or connected with the performance of extra Work, of any nature. No special, incidental or consequential damages may be claimed or recovered against City, its

representatives or agents, whether arising from breach of Contract, negligence, or strict liability, unless specifically authorized in the Contract Documents.

B. Overhead and Profit: (Overhead shall be as defined in this Section)

1. Overhead and profit on labor for extra Work shall be 15 percent.
2. Overhead and profit on materials for extra Work shall be 15 percent.
3. Overhead and profit on equipment rental for extra Work shall be 10 percent.
4. When extra Work is performed by a first tier Subcontractor, Contractor shall receive a 5 percent markup on Subcontractors' total costs of extra Work. First tier Subcontractor's markup on its Work shall not exceed 15 percent.
5. When extra Work is performed by a lower tier Subcontractor, Contractor shall receive a total of 5 percent markup on the lower tier Subcontractors' total costs of extra Work. Contractor and first tier Subcontractors and lower tier Subcontractors shall divide the 10 percent markup as mutually agreed.
6. Notwithstanding the foregoing, in no case shall the total markup on any extra Work exceed 20 percent of the direct cost, notwithstanding the actual number of Contract tiers.
7. On quotations covering both increases and decreases in Contract Sum, overhead, profit, and commission shall be allowed on the net increase only as determined in this Section. When the net difference is a deletion, no percentage for overhead profit and commission shall be allowed, but rather a deduction shall apply.
8. The markup shall include profit, small tools, cleanup, engineering, supervision, warranties, cost of preparing the cost quotation, jobsite overhead, and home office overhead. No markup will be allowed on taxes, insurance, and bonds.

C. Taxes:

1. All State sales tax, use tax, and San Mateo County and applicable City sales taxes shall be included.
2. Federal and Excise tax shall not be included.

D. Owner-Operated Equipment: When owner-operated equipment is used to perform extra Work, Contractor will be paid for operator as follows:

1. Payment for equipment will be made in accordance with this Section.
2. Payment for cost of labor will be made at no more than rates of such labor established by collective bargaining agreements for type of worker and

location of Work, whether or not owner-operator is actually covered by such an agreement.

- E. Accord and Satisfaction: Every Change Order and accepted CCD shall constitute a full accord and satisfaction, and release, of all Contractor (and if applicable, Subcontractor) claims for additional time, money or other relief arising from or relating to the subject matter of the change including, without limitation, impacts of all types, cumulative impacts, inefficiency, overtime, delay, and any other type of claim. Contractor may elect to reserve its rights to disputed claims arising from or relating to the changed Work at the time it signs a Change Order or approves a CCD, but must do so expressly in a writing delivered concurrently with the executed Change Order or approved CCD, and must also submit a Claim for the reserved disputed items pursuant to Article 12 of Document 00 72 00 (General Conditions) no later than 30 Days of Contractor's first written notice of its intent to reserve rights.

1.4 COST BREAKDOWN

- A. Labor: Contractor will be paid cost of labor for workers (including forepersons when authorized by City) used in actual and direct performance of extra Work. Labor rate, whether employer is Contractor, Subcontractor or other forces, will be sum of following:
1. Actual Wages: Actual wages paid shall include any employer payments to or on behalf of workers for health and welfare, pension, vacation, and similar purposes.
 2. Labor Surcharge: Payments imposed by local, county, state, and federal laws and ordinances, and other payments made to, or on behalf of, workers, other than actual wages as defined in Paragraph 1.4A.1 of this Section, such as taxes and insurance. Labor surcharge shall be and shall not exceed that set forth in California Department of Transportation official labor surcharges schedule which is in effect on date upon which extra Work is accomplished and which schedule is incorporated herein by reference as though fully set forth herein.
- B. Material: Only materials furnished by Contractor and necessarily used in performance of extra Work will be paid for. Cost of such materials will be cost, including sales tax, to purchaser (Contractor, Subcontractor or other forces) from supplier thereof, except as the following are applicable:
1. If cash or trade discount by actual supplier is offered or available to purchaser, it shall be credited to City notwithstanding fact that such discount may not have been taken.
 2. For materials salvaged upon completion of extra Work, salvage value of materials shall be deducted from cost, less discounts, of materials.
 3. If cost of a material is, in opinion of City, excessive, then cost of material shall be deemed to be lowest current wholesale price at which material is

available in quantities concerned delivered to Site, less any discounts as provided in this Section.

- C. Equipment Rental: For Contractor- or Subcontractor-owned equipment, payment will be made at rental rates listed for equipment in California Department of Transportation official equipment rental rate schedule which is in effect on date upon which extra Work is accomplished and which schedule is incorporated herein by reference as though fully set forth herein. If there is no applicable rate for an item of equipment, then payment shall be made for Contractor- or Subcontractor-owned equipment at rental rate listed in the most recent edition of the Association of Equipment Distributors (AED) book. For rented equipment, payment will be made based on actual rental invoices. Equipment used on extra Work shall be of proper size and type. If, however, equipment of unwarranted size or type and cost is used, cost of use of equipment shall be calculated at rental rate for equipment of proper size and type, as determined by City. Rental rates paid shall be deemed to cover cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. Unless otherwise specified, manufacturer's ratings, and manufacturer-approved modifications, shall be used to classify equipment for determination of applicable rental rates. Individual pieces of equipment or tools not listed in said publication and having a replacement value of \$100 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefor as payment is included in payment for labor. Rental time will not be allowed while equipment is inoperative due to breakdowns.
1. For equipment on Site, rental time to be paid for equipment shall be time equipment is in operation on extra Work being performed or on standby as approved by City. The following shall be used in computing rental time of equipment:
 - a. When hourly rates are listed, less than 30 minutes of operation shall be considered to be ½ hour of operation.
 - b. When daily rates are listed, less than four hours of operation shall be considered to be ½ Day of operation.
 2. For equipment that must be brought to Site to be used exclusively on extra Work, cost of transporting equipment to Site and its return to its original location shall be determined as follows:
 - a. City will pay for costs of loading and unloading equipment.
 - b. Cost of transporting equipment in low bed trailers shall not exceed hourly rates charged by established haulers.
 - c. Cost of transporting equipment shall not exceed applicable minimum established rates of California Public Utilities Commission.
 - e. City will not make any payment for transporting and loading and unloading equipment if equipment is used on Work in any other way than upon extra Work.
 3. Rental period may begin at time equipment is unloaded at Site of extra Work and terminate at end of the performance of the extra Work or Day on which City directs Contractor to discontinue use of equipment,

whichever first occurs. Excluding Saturdays, Sundays, and City's legal holidays, unless equipment is used to perform extra Work on such Days, rental time to be paid per Day shall be four hours for zero hours of operation, six hours for four hours of operation and eight hours for eight hours of operation, time being prorated between these parameters. Hours to be paid for equipment that is operated less than eight hours due to breakdowns, shall not exceed eight less number of hours equipment is inoperative due to breakdowns.

- C. Work Performed by Special Forces or Other Special Services: When City and Contractor, by agreement, determine that special service or item of extra Work cannot be performed by forces of Contractor or those of any Subcontractors, service or extra Work item may be performed by specialist. Invoices for service or item of extra Work on basis of current market price thereof may be accepted without complete itemization of labor, material, and equipment rental costs when it is impracticable and not in accordance with established practice of special service industry to provide complete itemization. In those instances wherein Contractor is required to perform extra Work necessitating a fabrication or machining process in a fabrication or machine shop facility away from Site, charges for that portion of extra Work performed in such facility may, by agreement, be accepted as a specialist billing. City must be notified in advance of all off-Site Work. In lieu of overhead and profit provided in Paragraph 1.3B of this Section, 15 percent will be added to specialist invoice price, after deduction of any cash or trade discount offered or available, whether or not such discount may have been taken.

1.5 FORCE-ACCOUNT WORK

- A. If it is impracticable because of nature of Work, or for any other reason, to fix an increase or decrease in price definitely in advance, the Contractor may be directed to proceed at a not-to-exceed (NTE) maximum price which shall not under any circumstances be exceeded. Subject to such limitation, such extra Work shall be paid for at actual necessary cost for Force-Account Work or at the negotiated cost, as determined by City. The cost for Force-Account Work shall be determined pursuant to this Section.
- B. Force-Account Work shall be used when it is not possible or practical to price out the changed Work prior to the start of that Work. In these cases, Force-Account Work will be utilized during the pricing and negotiation phase of the change. Once negotiations have been concluded and a bilateral agreement has been reached, the tracking of the Work under Force-Account is no longer necessary. Force-Account Work shall also be used when negotiations between City and Contractor have broken apart and a bilateral agreement on the value of the changed Work cannot be reached. City may approve other uses of Force-Account Work.
- D. Whenever any Force-Account Work is in progress, definite price for which has not been agreed on in advance, Contractor shall report to City each Business Day in writing in detail amount and cost of labor and material used, and any other expense incurred in Force-Account Work on preceding Day, by using the

Cost Quotation form attached hereto. No claim for compensation for Force-Account Work will be allowed unless report shall have been made.

- E. Whenever Force-Account Work is in progress, definite price for which has not been agreed on in advance, Contractor shall report to City when 75 percent of the NTE amount has been expended.
- F. Force-Account Work shall be paid as extra Work under this Section. Methods of determining payment for Work and materials provided in this Paragraph 1.5 shall not apply to performance of Work or furnishings of material that, in judgment of City, may properly be classified under items for which prices are otherwise established in Contract Documents.

1.6 CITY-FURNISHED MATERIALS

- A. City reserves right to furnish materials as it deems advisable, and Contractor shall have no claims for costs and overhead and profit on such materials.

1.7 OVERHEAD DEFINED

- A. The following constitutes charges that are deemed included in overhead for all Contract Modifications, including Force-Account Work or CCD Work, whether incurred by Contractor, Subcontractors, or suppliers, and Contractor shall not invoice or receive payment for these costs separately:
 - 1. Drawings: field drawings, Shop Drawings, etc., including submissions of drawings
 - 2. Routine field inspection of Work proposed
 - 3. General Superintendence
 - 4. General administration and preparation of cost quotations, schedule analysis, Change Orders, and other supporting documentation as necessary
 - 5. Computer services
 - 6. Reproduction services
 - 7. Salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries
 - 8. Janitorial services
 - 9. Temporary on-Site facilities:
 - a. Offices
 - b. Telephones
 - c. Plumbing
 - d. Electrical: Power, lighting
 - f. Platforms
 - g. Fencing, etc.
 - h. Water
 - 10. Home Office Overhead
 - 11. Insurance and Bond premiums
 - 12. Procurement and use of vehicles and fuel used coincidentally in Work otherwise included in the Contract Documents
 - 13. Surveying

14. Estimating
15. Protection of Work
16. Handling and disposal fees
17. Final cleanup
18. Other incidental Work

1.8 RECORDS AND CERTIFICATION

- A. Force-Account (cost reimbursement) charges shall be recorded daily and summarized in Cost Quotation form attached hereto. Contractor or authorized representative shall complete and sign form each Day. Contractor shall also provide with the form: the names and classifications of workers and hours worked by each; an itemization of all materials used; a list by size, type, and identification number of equipment and hours operated; and an indication of all Work performed by specialists.
- B. No payment for Force-Account Work shall be made until Contractor submits original invoices substantiating materials and specialists charges.
- C. City shall have the right to audit all records in possession of Contractor relating to activities covered by Contractor's claims for Modification of Contract, including Force-Account Work and CCD Work.
- D. Further, City will have right to audit, inspect, or copy all records maintained in connection with this Contract, including financial records, bidding records, in possession of Contractor relating to any transaction or activity occurring or arising out of, or by virtue of, the Contract. If Contractor is a joint venture, right of City shall apply collaterally to same extent to records of joint venture sponsor, and of each individual joint venture member. This right shall be specifically enforceable, and any failure of Contractor to voluntarily comply shall be deemed an irrevocable waiver and release of all claims then pending that were or could have been subject to the Article 12 of Document 00 72 00 (General Conditions).

PART 2 – PRODUCTS NOT USED

PART 3 – EXECUTION NOT USED

COST QUOTATION FORM FOLLOWS ON NEXT PAGE

-END OF SECTION-

COST QUOTATION (CQ)

City of San Bruno

Project Title: _____

Contract Number _____

CQ Number: _____

Date: _____

In Response To _____

RFQ #, etc.

To: City of San Bruno

Attention: Project Engineer Name

567 El Camino Real

San Bruno, CA 94066

Phone: (650) 616-7065

Subject Ref. No: _____

(for Project Manager use only)

Fax: (650) 794-1443

From: _____

This Cost Quotation is in response to the above-referenced _____ **[insert RFQ, etc. as applicable]**.

Brief description of change(s):

ITEM DESCRIPTION	PRIME CONTRACTOR	SUB 1	SUB 2	SUB 3	SUB 4	TOTAL
MATERIAL						
Direct Labor Cost						
EQUIPMENT						
Other (Specify) Extended Overhead						
TOTAL COST						
Subcontractor's Overhead & Profit 15 percent						
Contractor's Overhead & Profit 15 percent						
Overhead & Profit to Contractor for Subcontractor's Work 5 percent						
(Percent of Total Cost above not including any Overhead & Profit)						
GRAND TOTAL						
REQUESTED CHANGE IN CONTRACT TIME (DAYS)						
By Contractor:		Signature:			Date:	