

**104.01 PARTNERING**

Partnering promotes communication between the Idaho Transportation Department (ITD) and the Contractor, and is used to identify and promote reciprocal goals. The objectives of partnering include:

- Complete projects within budget and on schedule.
- Increase responsiveness and timeliness of decisions.
- Improve problem solving.
- Reduce paperwork and rework.
- Eliminate litigation.

The backbone of partnering is the development of a win-win relationship between ITD and the Contractor that discourages gain by one at the other's expense. However, partnering does not mean a waiving of contract plans and specification requirements. The majority of ITD's projects now include a voluntary partnering specification. To implement this partnering specification, ITD's Resident/Regional Engineer and the Contractor's Project Manager jointly plan a Partnering Workshop. The Partnering Workshop should be held within thirty (30) days after the Notice to Proceed and before the Preconstruction Conference.

**Workshop Location and Length**

The workshop should not be held at ITD's District office or the Contractor's office, but rather at a neutral location such as a local hotel conference room, or a restaurant's banquet facility. Simple projects typically require ½ a day; complex projects with many issues may require 1½ to 2 days.

**Workshop Attendees**

All stakeholders (someone who has a vested interest in the successful completion of the project) should be invited. Attendees will vary depending upon the project, but should be the key people or the decision-makers in an organization. Possible workshop attendees include:

- |                                                                              |                       |
|------------------------------------------------------------------------------|-----------------------|
| Contractor Project Staff                                                     | Contractor Management |
| ITD Construction Staff                                                       | ITD Design Staff      |
| ITD Management                                                               | Subcontractors        |
| Suppliers                                                                    | Design Consultants    |
| Government Agencies (FHWA, Forest Service, Cities, Indian Communities, Etc.) |                       |

**Facilitator**

The selection of the Workshop Facilitator is critical to the workshop's success. Consideration may be given to bringing in an outside facilitator on large and/or complex projects to further reinforce the "neutral ground" framework. Contact the Construction section for facilitator references.

**Cost**

ITD and the Contractor will equally share the cost of the partnering workshop, including renting meeting space, providing lunch or refreshments, and hiring the facilitator.

### Workshop Agenda

Six major elements in a Partnering Workshop are:

1. **Introduce each partner.** Discuss job relationship and responsibilities.
2. **Develop mission statement, goals, and objectives.** Establish mutually agreed-upon goals and measurable objectives, e.g., completing the project on time or ahead of schedule, setting safety, cost, or quality goals.
3. **Identify problems, issues, or opportunities for the project.**
  - Project opportunities/alternatives -- Detour instead of staged construction could save time and costs.
  - Prioritize issues and develop action plans that define the issue, the person responsible for the solution, and the date the solution is required.
4. **Develop problem resolution/escalation process.** Identify authority levels, timelines for decisions, and who is responsible for what types of decisions. Define the relationship of all parties (i.e., consultant designers, other agencies, utility companies, etc.)

Problem resolution should be at the lowest level.  
If no agreement can be made, immediately escalate to the next level.  
No decision or ignoring the problem is not acceptable.

5. **Develop an evaluation process and an evaluation form.** Base the items to be evaluated on the project goals (e.g., project goal - speed up the review process of shop drawings). Use a rating system of 1 (poor) to 5 (good), with space for comments. Each stakeholder should evaluate the project every thirty to sixty (30 to 60) days or as determined by the project team. The Contractor's management and ITD management should review and take corrective action, if required.
6. **Sign a charter** that has the mission statement and common goals (see Exhibit 104.01-1).

### Monitor Progress

Hold follow-up workshops to address problem areas or issues that hinder successful performance and to reiterate the project goals and objectives. The Contractor's project staff and ITD construction staff should hold follow-up sessions on a weekly basis. The Contractor management and ITD management should meet on a monthly basis or as adjusted by partner agreement.

**Remember a partnering agreement does not waive  
the terms of the contract nor change the plans or specifications.**

PARTNERING CHARTER  
for  
Fairfield IC to MP 103.5  
Project No. IR-84-2(35)95

We are a team dedicated to providing a quality project in accordance with the contract. We are committed to employee and public safety, environmental protection and minimizing public inconvenience, as described in the objectives listed below:

PERFORMANCE OBJECTIVES:

- Build a quality project,
- Provide a safe job site,
- Complete this job on time,
- Realize a reasonable profit,
- Minimize public inconvenience,
- Earn 90% of the ride specification bonus.

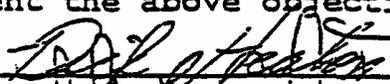
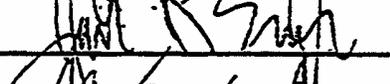
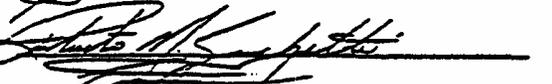
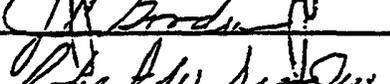
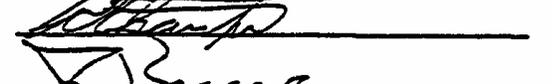
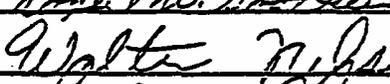
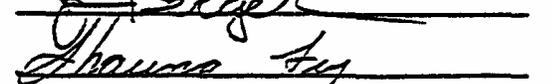
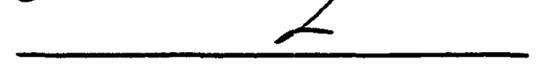
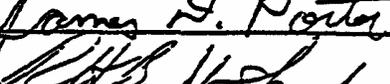
ADMINISTRATIVE OBJECTIVES:

- Finish this job with no claims,
- No property damage over \$1,000,
- Minimize paperwork,
- Minimize change orders.

COMMUNICATION OBJECTIVES:

- Make consistent, timely decisions at the lowest possible level,
- Work toward timely conflict resolution,
- Use experience and knowledge gained on this job to better design next project phase.

We, the undersigned, agree to make a good faith effort to implement the above objectives.

**104.02 VARIATION IN QUANTITIES**

Contract bid item quantities are estimated and subject to variation during construction. The Engineer may increase or decrease quantities as necessary to complete the project. The percentage of completion of items should be checked at each progress estimate. If it appears that an item will vary by more than 25%, then the contract unit price should be evaluated for reasonableness. If the price is not reasonable (i.e too high), the Engineer should request a price adjustment justification from the Contractor. The Contractor also has the right to request a price adjustment when quantities vary by more than 25% subject to the limitations of Subsection 104.02.

**Quantity Variation – With Price or Contract Time Adjustment**

If a quantity variance requires a price or contract time adjustment, a change order must be written to make the adjustment. See Section 104.03. If the Engineer and the Contractor cannot agree to a price adjustment, the Engineer may establish a price for the work or price it on a force account basis per Subsection 109.03.

**Quantity Variation – Without Price Adjustment**

If the Engineer determines the contract unit price is reasonable, and the Contractor has not requested a price adjustment, then work will continue at the contract unit price. Agreement to continue at the contract unit price should be agreed to by the Contractor and documented in writing. A sample form for documenting agreement to continue work at contract price or for requesting a price adjustment is shown in Figure 104.02-1. The sample form may be modified as needed by the Engineer.

**ITD-2243 Quantity Variation Request (QVR)**

If neither a price nor contract time adjustment is required, then a QVR (ITD-2243) shall be initiated when there is an increase or decrease in any one item of \$50,000 or more from the authorized amount. The QVR shall be prepared by the Engineer and sent to the District Engineer. The District Engineer must ensure that quantity variations are reported in a timely manner.

The District Engineer has final authority to approve QVRs; however, prior approval by FHWA for QVRs greater than \$100,000 on full oversight projects is required. The Construction section will obtain and document FHWA prior approval on the ITD-2243.

QVRs shall be numbered consecutively, beginning with number 1, for each contract. QVRs shall be numbered separately from change orders. The reason for the quantity variation shall be explained on the ITD-2243.

The District shall submit two original signed copies of the ITD-2243s to the Construction section. The Construction section will prepare copies and distribute appropriately. Where local units of government are involved, their approval shall be indicated on the ITD-2243.

The above \$50,000 rule also applies to new contract items established by change order. For Contract items listed as contingency amounts to be paid for by force account, no QVR is needed for overruns of the estimated amount unless it exceeds \$50,000.

#### **FHWA Prior Approval of QVRs**

On full federal oversight projects, FHWA must approve quantity variances for bid items over \$100,000. The ITD-2243 must be submitted well in advance of the actual time that quantities increase. The Construction section will submit the completed ITD-2243 to FHWA to obtain prior approval.

**Failure to obtain advance approval will jeopardize federal-aid funding.**



**104.03 CHANGE ORDERS AND EXTRA WORK**

The Engineer has the right to make changes in the work or add extra work within the general scope of the contract.

Advance approval of the ITD-02317, Record of Change Order Authorization, shall be given by the person who has been delegated the approval authority by the Chief Engineer. (See Change Order Approval Authority Table). The only signature required on an ITD-02317 is that of the approval authority.

When the Contractor proposes a change to the contract, the Contractor will complete and submit the ITD-02884, Request for Change (RFC), to justify the change along with any other information requested by the Resident Engineer.

***Contractor-requested changes should be evaluated for merit based on whether it is a benefit to ITD and the taxpayers.***

The Contractor is required to supply specific information to the Engineer regardless of whether the change is initiated by either the Department or the Contractor. Refer to specification subsection 104.03 for requirements. All requests by the Department to the Contractor should be made in writing and include a specified time for when the information is to be returned.

***The Contractor cannot be held responsible for any delays in work or additional costs if a specified time for when the information is to be submitted has not been included in the request letter.***

Submit a separate Change Order for each individual change or operation and include all items of work, adjustment, changes in plans or specifications, etc. to entirely cover the new work. If the new work includes contract items at contract prices, include this information in the Change Order. Do not wait to cover these items by a Quantity Variation Request (QVR). Do not include other work items or changes that are unrelated.

For example, a condition may arise where a change in specifications on crushed aggregate is warranted and a price adjustment is needed on this item. At the same time, an unplanned pipe must be installed at a particular location and there is no contract bid price for the pipe. Both conditions require a Change Order; however, they are entirely unrelated, so each must be submitted on a separate ITD-00400.

**Extra Work**

The Engineer may add extra work if necessary to satisfactorily complete the project. Extra work is documented on a Change Order. An agreed upon unit price for extra work is generally negotiated. If agreement cannot be reached on a price, the Resident Engineer has the option of establishing a price or may do the work on a Force Account basis. The Contractor may object and claim as to the method of pricing; but would bear the burden of proof that the price was unfair.

Force Account for extra work is most suitable where quantities and/or the nature of the work make it difficult to agree upon a price, or where the Contractor and the Engineer cannot agree on a price. Avoid having extra work or changed work done by Force Account, if possible. Use Force Account only when the nature of the work makes it impossible to arrive at an agreed price, or when detailed records are needed, such as on potential claim issues. Justification for using Force Account must be addressed on the ITD-02317. Use a contingency amount (CA), NOT lump sum (LS) when the actual cost cannot be reasonably estimated.

The prime contractor is entitled to administrative fees per subsections 104.03 and 109.03 (7) for extra work performed by a subcontractor. This is a one time fee regardless of the number of subcontractors.

**Refusal to do extra work**

In the event a contractor refuses to perform work proposed by the Engineer, the contractor should be asked to document this refusal and state the justification for refusal. Contact the Construction Section immediately as this may constitute breach of contract.

**Funds Availability**

Prior to submitting an ITD-00400, Change Order, for execution by the proper authorities with ITD and the Contractor, the necessary funds must be available for the proposed change. Availability and the source of the money will be determined and the proper forms, transfers, etc. made prior to execution of the Change Order.

**Authorization for Changes or Extra Work (ITD-02317)**

Generally, the ITD-02317, Record of Change Order Authorization, is the written justification for a Change Order and falls into one of the following categories:

- Compliance with the plans or specifications is either impossible or impractical.
- A product equal to the one specified can be obtained at a savings.
- A product better than the one specified can be obtained at no additional cost.
- An increase in cost that can be justified such as an improvement in safety or aesthetics.
- Extra or deleted work.

An ITD-02317 is prepared in the District and transmitted to the Construction section by electronic mail. Supporting documentation may be transmitted by fax or regular mail. The electronic mail shall be treated as the original. No follow-up submission of a "hard copy" is required. After the ITD-02317 has been reviewed in the Construction section, an appropriate

number of copies will be made and distributed by the Construction section as necessary. Any special distribution desired by the District should be noted on the ITD-02317.

Any additional comments added to the ITD-02317 at headquarters will be included, as appropriate, on the ITD-00400 Change Order.

### **Processing the ITD-02317, Record of Change Order Authorization**

The ITD-02317 should be completed so that the reason and necessity for the change is evident.

The District prepares the ITD-02317 for all changes originating at the District regardless of cost or nature of the change and requires prior consultation according to the approval authority table.

The Construction Section will prepare the ITD-02317 for changes originating from headquarters Sections or FHWA. Changes noted with an asterisk (\*) on the Change Order Approval Authority Table shall have prior approval of FHWA on all full Federal Oversight projects. Changes marked with a plus symbol (+) shall have prior approval of the FHWA on all Federal-Aid projects. FHWA will document their prior approval on a FHWA 1365 form and provide a copy to the ITD Construction section for inclusion in the project file. The degree of federal involvement will be shown in the contract documents.

The ITD-02317 that is prepared for Minor Change Orders (MCO's) requires prior consultation and recommendation from the District Engineer and will be processed the same as any other ITD-02317 to maintain proper records.

The ITD-02317 should include the following:

1. A description of the work to be performed including the reasons why the work is necessary.
2. The materials that are to be incorporated into the work and any materials testing requirements (if applicable).
3. The construction requirements as to how the work is to be performed.
4. A method of measurement for quantifying the work that is to be performed and accepted by the Engineer.
5. Pricing, including the basis of payment stipulating how the contractor is to be paid and how the pricing was verified and determined to be reasonable.
6. Contract time accounting including the reasons for any time adjustments and the method used to determine validity. An analysis of impacts to the project schedule's critical path is necessary.
7. Attachments as applicable (e.g. specifications, drawings, RFCs).

As a minimum, the above six elements shall be approved **prior** to the performance of extra work through the issuance and approval of the ITD-02317, Record of Change Order Authorization.

When changes and extra work are to be performed after substantial completion or with interim completion dates, a method of time accounting to control the duration of the work will be required to be specified in the Change Order. The change order must address liquidated damages.

Any change involving environmental aspects of the project shall be made only after obtaining approval from those having authority for the environmental document. Similarly, changes that might affect the operations of Ports of Entry (POE) should be made only after consultation with the POE Manager. The person(s) consulted with and consultation dates must be completed on the ITD-02317 to advise management that appropriate specialists have been brought into the decision-making process for the change. Discussion with the specialists should include all elements of the proposed change including cost and time. For example, while the proposed change may have technical merits, high cost impacts may negate any benefits incurred. Specialists may include, but are not limited to:

- ✓ The Designer
- ✓ District and Headquarters Materials
- ✓ District and Headquarters Traffic
- ✓ The Bridge Section
- ✓ District Environmental Planner
- ✓ The Environmental Section
- ✓ Roadway Design
- ✓ The Legal Section
- ✓ The Construction Section
- ✓ The Utility Section

If verbal approval of the ITD-02317 is obtained, the name of the individual giving verbal approval and the date of said approval should be shown in the "discussed with \_\_\_\_\_" column.

***Changes or extra work must be approved prior to doing the work.***

If an ITD-02317 is found to be in error or require revision, a new ITD-02317 must be prepared. The new ITD-02317 must contain a statement to the effect that it supersedes or revises the previous ITD-02317 dated \_\_\_\_\_.

#### **Change Order (ITD-00400)**

Because a Change Order modifies or supplements the contract, it must be written in a clear, concise, and explicit manner that can be readily interpreted by anyone not familiar with the work.

An ITD-00400, Change Order, is required for all changes to the contract that:

- Significantly alter the quantity of work or working methods,
- Add/subtract work (other than quantity overruns/underruns that are not significant),
- Change specifications,
- Change plans, or

- Any other item spelled out in the contract as altered by ITD.

Additional considerations as to the need for a Change Order are:

- Generally, a Change Order is not necessary if prices are already established in the contract.
- Where specifications permit the purchase of materials left on hand at invoice cost, the invoice costs will normally be considered as stipulated costs and a Change Order is not needed.
- That a Change Order is required to purchase surplus aggregate since this price will have to be negotiated (normally a NON-PARTICIPATING Change Order).

When the proper authorities have executed the Change Order, the document becomes a supplemental agreement to the contract and carries the same legal force as the original contract.

### **Issuance of an Avoid Verbal Order (AVO) for a Change Order**

If the change order has not yet been fully executed, the order given to the Contractor to proceed with the changed, deleted, or extra work should be given in writing by using an Avoid Verbal Order (AVO). The order given by the Engineer must be clear and concise for the work to be performed, along with the method of measurement and basis of payment. The AVO may be hand written, provided it is legible.

When form, ITD-2055, AVOID VERBAL ORDER/SPEED LETTER (AVO) is used to give instructions or messages to the contractor, the following procedure should be used:

- The message is to be prepared by ITD and signed by the person representing ITD. The contractor's representative receiving the message is to also sign the AVO.
- The yellow copy remains with the contractor's representative; the Resident retains the white and pink copies. A copy of the original white copy is to be sent to the contractor's home office to ensure their management is aware of this communication.

The purpose for these instructions is to make sure the contractor officially acknowledges receipt of an AVO by requiring a signature of the Contractor's representative and a "hard copy" transmitted to his main office by the Resident Engineer for documentation purposes. Claims investigations have revealed, in too many instances, that no record is available confirming the contractor received the AVO's. The contractor's representative's signature and date of receipt are very important.

***The AVO must be signed by the Contractor.***

Examples of AVOs are at the end of this section (Example 104.03-1 and 104.03-2).

### **Changes to Project Documents**

When hand written changes are made to project documents, for example the ITD 002317, Record of Change Order Authorization, it is important that the person who makes the change/s provide documentation of that change through an initial and date next to the change. Virtually

every document we produce has the possibility of ending up as evidence in a dispute. Proper identification of the person making a change, and the date of that change are critical to our record keeping process and authenticity of the document. Also keep in mind that changes made, by ITD, to a document after signature by the contractor may present additional problems in terms of legality.

**Change Order Approval Authority Table**

The Change Order Approval Authority Table designates approval authority for the various types of changes.

CHANGE ORDER APPROVAL AUTHORITY TABLE			
Item No	Type of Change	Approval Authority	In Consultation With
1*	Changes in the geometry of a roadway section (including revisions involving addition, deletion, relocation, or structural design of major structures, alignment, or typical section on main roads, ramps, and frontage roads or cross roads.	Construction Engineer	Roadway Design Engineer Traffic Engineer, Bridge Engineer, Materials Engineer
2*	Revisions in conflict with approved standards including new technologies for which no standards have been approved.	Construction Engineer	Discretionary
3* +	Changes in approved access provisions (Interstate and NHS routes).	Construction Engineer	Deputy Attorney General Right of Way Manager, Traffic Engineer, FHWA
4*	Change in specifications, including type or quality of materials and work allowed to remain in place.	Construction Engineer	Appropriate Section Manager
5*	Claim settlements, including negotiated settlements	\$25,000 Resident Engineer \$100,000 District Engineer \$500,000 Construction Engineer >\$500,000 Chief Engineer	District Engineer, Claims Engineer Construction Engineer, Claims Engineer Assistant Chief Engineer (O) Discretionary
6* +	Changes, which would result in elimination of, or delay to, environmental mitigation measures and commitments on Federal-Aid and State-funded projects covered under a FHWA-approved environmental document.	Construction Engineer	Roadway Design Engineer Environmental Manager FHWA
7*	Changes or extra work resulting in an increase or decrease in costs exceeding	\$100,000 Construction Engineer, \$500,000 Assistant Chief Engineer (O) \$1,000,000 Chief Engineer	Discretionary
8* +	Changes in contract plans beyond the general scope and intent of the original contract.	Assistant Chief Engineer (O)	Discretionary FHWA
9*	Extension of contract time.  (Individual time extensions that are > than 5 days or when cumulative time extensions exceed 10 days require FHWA approval on full oversight projects.)	0-5 days District Engineer >5 days Construction Engineer >10 days FHWA	Discretionary
10	Utility and Railroad Change Orders	Construction Engineer	Utility Engineer
11	Engineering errors (a participation determination will be necessary).	District Engineer	Construction Engineer Discretionary
12	All changes and extra work not included under 1-10 above and which involve costs between (-\$100,000) to (-\$25,000) and \$25,000 to \$100,000	District Engineer	Construction Engineer
13	Minor Change Orders (MCO's) not included under 1-12 above and which involve costs between (-\$25,000) to \$25,000.	Resident Engineer	District Engineer
* +	<b>Requires FHWA prior approval on full federal involvement projects. Requires FHWA prior approval on ALL Federal-Aid Project The Construction Section will obtain FHWA approval of Change Orders.</b>		

**Processing the ITD-00400, Change Order**

The Change Order should give:

- 1) Direction to the Contractor of the work to be done or deleted (give the location and a clear description of the work to be performed under a main heading);
- 2) Construction Requirements if any;
- 3) Material Requirements, if any, and including material acceptance requirements if applicable;
- 4) The method of measurement and basis of payment (use secondary headings);
- 5) Adjustment in contract time (address adjustments at the bottom of the Change Order).

Do not include from the ITD-02317 the justifications for, and evaluation of, the change order.

Every Change Order must address cost (#3) and time (#4) even if it is a no cost Change Order or time has not been affected. Address the time in the narrative of the change order. In the space for adjustment in contract time space (located in the lower left hand corner) state either "See Above" or "No Change" as applicable.

The space for adjustment in contract time **must be filled in** on all Change Orders. The space provides for "time adjustments," not "time extensions." The contract time can be decreased as well as increased if the change warrants a decrease.

Time adjustments on all contract changes should be considered and resolved at the time the Change Order is initiated. If the change cannot be accomplished concurrently with the controlling operations, or affects the critical path, then a time adjustment should be made.

Change Orders shall be numbered consecutively, beginning with number 1 for each contract. If the contract covering work involved in a previous change must be amended, a new Change Order shall be completed and assigned a new number.

The date on the face of the Change Orders will normally be the date on which the Contractor was ordered to do the work. This is not the date from the ITD-02317 "Date Authorized by the Approval Authority". It is the date the actual order was given (either written or verbally to the Contractor) **Do not authorize the contractor to do work until after the ITD authority has given approval.** The date the verbal order was given to the Contractor will be the date on the face of the subsequent Change Order, ITD-00400. The date of the ITD-02317 authorizing the Change Order will be the date approval was given to the Contractor.

**Naming of Change Order Items**

The ability to list the changes by item number(s) is imperative to track Change Order items. The item number(s) or name(s) given to Change Order item(s) must be kept uniform from project to project.

Change Order items that are not already provided for in the contract shall use the following numbering method. The number consists of:

- An alpha designator for the type of work.
  - C - CHANGE ORDER (the majority of change orders will use this designation)
  - F - FORCE ACCOUNT (used when subsection 109.03 is applicable)
  - M - MATERIALS ON HAND (used when subsection 109.06 is applicable)
  - ML – MATERIALS LEFT ON HAND (used when subsection 109.07 is applicable)
  - U – UTILITY (used only for ITD-00403 change orders)

For federal-aid contracts, an “N” alpha designator must be included preceding the above designators whenever the item has been *conclusively* determined that it is a non-participating (i.e. Federal-aid dollars will not be used) cost. For example, materials left on hand costs are always non-participating on federal aid contracts.

- A number for the Change Order after the alpha designator. Always use at least two digits (e.g. 01, 09, 13, 27)
- The item number had the work been included in the original contract, a contract item designator, or other alphanumeric designator abbreviating the type of work to be done.

The entire coding or naming of the Change Order item cannot exceed 8 characters (wincaps 2000) or 25 characters (wincaps 2002).

Refer to the wincaps documentation for further information.

Naming Examples (using wincaps 2002):

- A new item for Plant Mix Pavement, Class II, established by Change Order No. 9 would be designated as: C09-405-010A Plant Mix Pavement, Class II.
- Change Order No. 10 for adding work to dig a ditch by Force Account could be designated as: Item No. F10 – Ditch Digging.

- Change Order No. 5, a new item for Plantmix Pavement, Class II as requested by the local agency to place on local streets outside of federal-aid project limits would be designated NC05-405-10A Local Streets.

Items involved in a Change Order that have been previously established either in the original contract documents or an earlier Change Order will continue to use the previously established number, provided the unit price remains the same.

### **Contractor's Signature**

The Contractor's original signature will be obtained on the two copies of the Change Order prior to submission to the Construction Section. **Upon receipt of the change order, the Contractor is required to return the signed change order to the Engineer or return the change order unsigned.** In the event the Contractor does not agree to the Change Order and refuses to sign, the specifications also require the Contractor to provide a written explanation for refusal. The ITD-02317 is then submitted to the Construction Section along with the Contractor's written explanation. If the Change Order is unilaterally issued, it shall be given to the Contractor as an effective order. The Contractor may then file a claim if so desired. In this case, when the executed change order is mailed to the contractor, use certified mail, return receipt requested.

### **Local Agencies**

In accordance with Section 110 of the "Guidelines for Local Public Agency Projects", and typical State/Local Agreements, the Department must obtain prior approval from the Local Public Agency (LPA) when changes made to the plans and specifications, through issuance of a change order, increases the cost of a project.

The LPA must be aware of and signatory to all change orders. When the LPA's share of any change order exceeds \$1,000, or if quantity variance exceeds this amount, the Department will collect the LPA's share of the cost prior to starting or continuing the work.

It is imperative that agreement with the contractor on the scope of work, associated costs and time adjustments be made **prior** to the performance of the extra work.

See Example 104.03-7 for an example of a State/Local construction agreement for reference.

### **Copies**

The District will submit to the Construction Section two typed copies of the ITD-00400, Change Order, along with any attachments. The Change Orders shall contain original signatures.

Attachments should be folded to the size of the Change Order. After approval, enough additional copies will be made at headquarters for appropriate distribution.

Minor Change Orders (MCOs) shall be processed the same as other Change Orders and transmitted to the Contractor by the Construction Engineer.

### **Sketches and Drawings**

Sketches or drawings are sometimes a necessary supplement to a Change Order and must be legible prints showing all data necessary to properly describe the work. Prints must be attached to all copies when submitted by the District. If attachments are larger than (11" x 17"), the District shall submit nine (9) copies of attachments.

**Constructive Change**

Any conduct by the Engineer (or a representative authorized to order changes), which is not a written Change Order, but which has the effect of requiring the Contractor to perform work different from that prescribed by the terms of the contract, could constitute a constructive Change Order. If the Contractor gives written notice that constructive change has occurred, and the Engineer agrees after evaluation, a written Change Order will be initiated and processed as any other Change Order. (ITD Standard Specifications 104.03-2)

**Consultant Designs - Errors or Omissions Change Orders**

Design errors or omissions in contract documents are inevitable and costs are either recoverable or non-recoverable. Costs are considered non-recoverable provided that the consultant followed the work scope; followed established Departmental procedures and design standards; and practiced due diligence (“standard of care”) in trying to prevent mistakes during design. For example, a problem may appear as substandard consultant design work when the problem could have been because of restrictions in the consultant’s work scope or based on information and direction provided by the Department.

If the design consultant prepared the plans and other contract documents in accordance with Department standards and procedures and the consultant agreement, and adhered to professional standards, the consultant cannot be held accountable.

However, cost can be recoverable if the errors and omissions result from:

- 1) Substandard Design – the design does not meet the standards and criteria established by the Department and referenced in the scope of services, federal regulations or other normal and accepted principles and practices.
- 2) Defective Special Provision – the special provision does not specify the necessary requirements or imposes requirements that cannot be reasonably attained.
- 3) Deficient Site Investigation – the investigation did not adequately identify all features, including subsurface features, resulting in adverse impacts to the construction of the project.
- 4) Contract errors, omissions and conflicts that materially effect construction.
- 5) Work was completed according to the plans but was incorrect and must be redone.

To clarify recoverable and non-recoverable costs, the following two instances are used:

**Instance A:** The consultant's plans failed to show guardrail on an embankment that would require protection in accordance with the Design Manual. The department and local government determine that guardrail is required and the consultant is so informed. Subsequently, since there was no guardrail in the contract, the Resident Engineer negotiates a fair and equitable price for the guardrail and a Change Order is prepared.

**Instance B:** The consultant's plans specify spread footing for the abutments of a small single-span bridge. Apparently, the foundation investigation was improper, as the gravel layer on which the spread footing was to be founded amounted to a very shallow layer that is unacceptable for supporting the abutments. The consultant and other department personnel are contacted. After additional investigation, it is agreed that the spread footing design must be abandoned in favor of a pile-supported foundation. Consequently, the excavations must be backfilled and compacted in preparation to driving piling. A Change Order is prepared to cover the backfilling and the design changed to piling.

The situation described in Instance A is one in which the consultant would not normally be expected to share in the construction cost. It is assumed that the negotiated price did not result in any greater total cost to the project than would have occurred had the item been included in the original plans; therefore, no assessment should be made against consultant.

The situation described in Instance B, however, is one in which additional costs were incurred to perform corrective work that was the result of a recoverable design error or omission. The extra work resulted in no benefit to the project. Therefore, the consultant is liable for the costs of excavating between the newly established abutment grade and the originally designed footing grade, as well as the backfilling and compacting of the excavation. The cost of piling should not be considered the consultant's liability.

The following steps should be followed by the Engineer to identify and recover error and omission costs from the consultant

- 1) Evaluate the error or omission to see if it is recoverable. The criteria to use are:
  - a) The error is **clearly** due to design oversight, and
  - b) The error has caused the cost to increase above the amount considered necessary had the design been correct in the first place (e.g. work has to be removed and redone; the initial placement and removal costs may be eligible for reimbursement).
  - c) Verification has been received from Project Development that what may appear as substandard design work was not caused by restrictions in work scope or information or direction provided by the Department to the Consultant.
  
- 2) At the first indication of a potential design error and omission take the following actions (the above verification may not be received immediately):
  - (a) Immediately notify the Consultant (and in writing) of the error.
  - (b) Give the consultant every opportunity to participate in a solution and to take corrective action.
  - (c) Record the work using force account procedures and photographs, and document all decisions and actions.
  - (d) Determine the increased construction expense for the cost of the corrective action.
  - (e) Provide the consultant with a letter of cost for the corrective action. Provide a deadline for a response/repayment.

All potential recovery against engineering consultants for design errors and omissions costs shall be approved by the Construction Engineer prior to initiating recovery. The cost for correcting an error and/or omissions is based on comparison with the actual first-time cost if the design had been initially correct. First-time costs, as well as **routine** variations in estimated quantities, are not considered recoverable costs. Costs that the Department may have incurred to resolve changes in the contract documents, additional engineering and inspection costs, and contractor delay are included if supportable.

The Engineer, upon approval of the Construction Engineer, shall then correspond with the consultant setting forth the basis of the recovery. Further action may be necessary if the consultant disagrees. The Construction Section should then be contacted to discuss further

actions. On locally-sponsored projects, the sponsor shall pursue restitution for errors and omissions from their consultant. The sponsor needs to be informed at the earliest possible date of an error or omission that could increase their cost. In the event the error or omission results in costs for which the consultant is judged responsible, the Resident Engineer shall assure that the payment received is credited to the project.

Change Orders written to compensate the Contractor for correction of Consultant Engineering errors and omissions (where recovery of costs is being pursued) should be coded as NON-PARTICIPATING. In those cases where the Consultant is billed and payment is received, the Resident Engineer will assure that payment is credited against the project.

### **Utility Agreement Change Order**

The ITD-00403, Utility Agreement Change Order, is used to make any change in the original utility agreement, or to facilitate utility work not covered by an agreement. These Change Orders are submitted to the Construction Section for processing in the same format as other Change Orders, except distribution is by the Utility Engineer. The Construction Section will submit the ITD-00403 to the Utility Engineer for distribution. Refer to section 105.07 of this manual for a more thorough discussion of Utility and Railroad Agreement Change Orders and other actions that may be required because of such Change Orders.

The Construction Section or higher authority will approve all utility Change Orders, except that the Chief Engineer will sign all Railroad Change Orders.

Utility Change Orders are to be numbered separately from Construction Change Orders. Begin with number 1 for each contract and number consecutively.

An ITD-02317 must also be completed for all Utility Change Orders. The Construction Section prepares the ITD-02317 if the Utility Engineer initiates the change. The District prepares the ITD-02317 if initiated in the District. Discussion with the Utility Engineer must be documented on the ITD-02317. Distribution of the ITD-02317 is by the Construction Section.

### **ITD-02317 and ITD-00400, Format Requirements**

Format requirements are listed below:

- Main headings should be in all caps, underlined, and begin at the left margin line. When more than one heading applies, use all that apply. Nearly all Change Orders will have one of the following as a main heading:

CHANGE IN PLANS

CHANGE IN SPECIFICATIONS

MATERIALS LEFT ON HAND (In most cases this heading is followed by (NON-PARTICIPATING) on Federal-aid Projects)

QUANTITY VARIANCE

ENGINEERING ERROR (In most cases this heading is followed by (NON-PARTICIPATING) on Federal-aid Projects)

CLAIM SETTLEMENT

QUANTITY VARIANCE

- Secondary headings should also be in all caps, left margin oriented, and underlined. In most cases they will be one, or more, of the following:

ESTIMATED INCREASE IN CONTRACT ITEMS AT CONTRACT PRICES  
ESTIMATED INCREASE IN CONTRACT ITEMS AT STIPULATED PRICES  
ESTIMATED INCREASE IN CONTRACT ITEMS AT AGREED PRICES  
ESTIMATED INCREASE IN CONTRACT ITEMS BY FORCE ACCOUNT  
ESTIMATED DECREASE IN CONTRACT ITEMS AT CONTRACT PRICES  
ESTIMATED DECREASE IN CONTRACT ITEMS AT STIPULATED PRICES  
ESTIMATED DECREASE IN CONTRACT ITEMS AT AGREED PRICES  
ESTIMATED DECREASE IN CONTRACT ITEMS BY FORCE ACCOUNT  
ESTIMATE OF EXTRA WORK AT AGREED PRICES  
ESTIMATE OF EXTRA WORK AT STIPULATED PRICES  
ESTIMATE OF EXTRA WORK BY FORCE ACCOUNT

- Subheadings are used at the end of each secondary section. The subheading should be in upper and lower case and underlined and generally consists of the following:

Total Estimated Increase  
Total Estimated Decrease

A subheading is also used at the end of the Change Order to show:

Net Estimated Increase or  
Net Estimated Decrease

### **Automated System for Change Order Tracking (ASCOT)**

It is a Department objective to execute change orders in a timely manner and to mitigate the number of preventable change orders. A change order tracking system is used to assist in change order process monitoring, reporting and improvement. The system assists in evaluations regarding whether the process:

- 1) Is meeting, exceeding or lagging established targets at specific points in time;
- 2) Is improving or worsening over time;
- 3) Has specific areas for improvement; and
- 4) Is showing a positive response to corrective actions

Tracking includes the ITD-2317 and the ITD-400 or ITD-403. Each region/residency (or local agency as applicable), District and the Construction Section shall put this system into practice in place of any other methods that may exist **no later than April 19, 2004.** ASCOT is located on the Department Intranet and is accessed via the Construction Section's homepage.

A change order is to be entered into ASCOT on the same day as ITD authorized approval for the change order is received or on the same day that work starts, whichever comes first. Subsequent entries into the system shall be completed as process steps occur.

**Examples 104.03-1 through 6**

Examples of two (2) completed AVOs, two (2) ITD-00400s, an ITD-02317, and an ITD-00403 are on the following pages. All forms must be properly signed to be effective.

The most current electronic version of these forms can be accessed by the Department Intranet and should be used whenever possible.

ITD-2055

IDAHO TRANSPORTATION DEPARTMENT  
AVOID VERBAL ORDER/SPEED LETTER



TO: MR. CONTRACTOR FROM: ELMER HARDWORKER  
ACME INC. SH-13 City Limits to River

SUBJECT/PROJECT NO. Replace Delineators/ST-1234(567) Key 1234

MESSAGE: In accordance with section 104.03 of the ITD Specifications, you are directed to replace existing delineators with new Type 1 and Type 2 as marked in the field. Material and work shall conform to Standard Drawings G-3 (copy attached) and section 617 of the ITD Specifications.

Per our conversation and agreement today, you will be paid \$17.13 each for an estimated quantity of 92 Type 1 delineators; \$17.93 each for an estimated quantity of 27 Type 2 delineators; and Administrative Expense per section 104.03 of the ITD Specifications. Contract time will be extended by one (1) calendar day.

SIGNED: ELMER HARDWORKER DATE: 5/10/01

REPLY: \_\_\_\_\_

SIGNED: Mr. Contractor, Superintendent (signature required to formalize change order) DATE: 5/10/01

ITD-2055

**IDAHO TRANSPORTATION DEPARTMENT  
AVOID VERBAL ORDER/SPEED LETTER**



TO: MR. CONTRACTOR FROM: ELMER HARDWORKER  
ACME INC. SH-13 City Limits to River

SUBJECT/PROJECT NO. Remove Obstructions/ST-1234(567) Key 1234

MESSAGE: In accordance with section 104.03 of the ITD Specifications, you are directed to remove and dispose of a set of truck scales and concrete headwall, and fill a septic tank with concrete, as directed and marked in the field. The concrete shall be Class 30 per section 502 of the ITD Specifications, and removal work shall be per section 203 of the ITD Specifications.

Per our conversation and agreement on the subject today, you will be compensated by Force Account and there will be no contract time adjustment.

SIGNED: ELMER HARDWORKER DATE: 5/10/01

REPLY: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNED: Mr. Contractor, Superintendent (signature required to formalize change order) DATE: 5/10/01

ITD - 400

CHANGE ORDER

See Contract Administration Manual Section 104.03



TO: CENTRAL PAVING CO

Project No.: CM-0100(114)

Location: FIVE MILE CREEK PATHWAY

Contract No.: 6368 Key No.: 5729

Authority No.: T943870

C.O. No.: 2

Date of Contractor Authorization: APRIL 27, 2001

Sheet 1 of 1

You are ordered to perform the following described work in accordance with the Standard Specifications and Special Provisions governing the above contract or as herein amended. The cost to perform this work includes all labor, equipment, materials, overhead and all other incidental costs associated with completing the work.

DESCRIPTION OF WORK

CHANGE IN PLANS

1. Delete the Type 5-B fencing, Item 610-A5, and add an item for 39 inch mesh Type 3-B fencing. The fencing is called out in the contract plans as Item 610A on page 12 of 20 from Station 0+74.77 104.8 ft left to Station 7+12.31 18.11 ft left.

2. Materials used will meet contract specifications.

3. Section 610 of the Standard Specifications and the Standard Drawing F-2-A shall apply to all work performed.

4. Quantities will be measured by linear foot.

5. ESTIMATED DECREASE IN CONTRACT ITEMS AT CONTRACT PRICES
610A5, Fence Type 5B 720' @ \$2.78/LF.
\$ 2,001.60

Total Estimated Decrease

\$ 2,001.60

ESTIMATED INCREASE IN CONTRACT ITEM AT AGREED PRICES
C02610-A3, Fence Type 3B 720' @ \$4.08/LF
\$ 2,937.60
C02ADMIN, Administrative Costs per Section 104.03 1 CA @ \$100.00
100.00

Total Estimated Increase

\$ 3,037.60

Net Estimated Increase =

\$ 1,036.00

6. This change order will not affect Contract Time.

(Stub on this line)

By reason of this change, Contract time will be adjusted by:

We agree that, if this Change Order is approved, we will perform the work detailed above and the prices shown.

Accepted: CENTRAL PAVING CO Contractor

NO CHANGE

Working Days
Calendar Days

Approved for: City, County or Highway District

By: Contractor Signature Date

APPROVED FOR STATE OF IDAHO

By:

By:

ITD - 400

CHANGE ORDER

See Contract Administration Manual Section 104.03

TO: Steelman-Duff, Inc.

Project No.: STP-3782(101)

Location: SH-69, Kuna to Amity Rd

Contract No.: 6339 Key No.: 5153

Authority No.: X933200

C.O. No.: 37

Date of Contractor Authorization: April 1, 2001

Sheet 1 of 1

You are ordered to perform the following described work in accordance with the Standard Specifications and Special Provisions governing the above contract or as herein amended. The cost to perform this work includes all labor, equipment, materials, overhead and all other incidental costs associated with completing the work.

DESCRIPTION OF WORK

QUANTITY VARIANCE

This change order makes a price adjustment for quantities over 125% of contract quantity of Item 626L Traffic Control Maintenance.

ESTIMATED INCREASE IN CONTRACT ITEMS AT CONTRACT PRICE

626L	Traffic Control Maintenance	525 @ \$33.00	=	\$ 17,325.00
	<u>Estimated Increase</u>		=	<u>\$ 17,325.00</u>

ESTIMATED INCREASE IN CONTRACT ITEMS AT AGREED PRICES

C37626L	Traffic Control Maintenance	2219.75 MNHR @ \$ 41.37	=	\$ 91,831.06
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Net Estimated Increase = \$109,156.06

Contract Time: There is no change to contract time.

(Stub on this line)

By reason of this change, Contract time will be adjusted by:

We agree that, if this Change Order is approved, we will perform the work detailed above and the prices shown.

No Change

- Working Days
- Calendar Days

Accepted: Steelman-Duff, Inc.

Contractor

By: \_\_\_\_\_ Date \_\_\_\_\_

Contractor Signature

Date

APPROVED FOR STATE OF IDAHO

Approved for: \_\_\_\_\_

City, County or Highway District

By: \_\_\_\_\_

By: \_\_\_\_\_

Title

Date

Title

Date

ITD - 2317

RECORD OF CHANGE ORDER AUTHORIZATION



Date: June 18, 2001 Project No.: STP-3782(101)  
 Contractor: Steelman Duff Key No.: 5153 C.O. No.: 37  
 Reg. Engr.: Scott T. Gurnsey, P.E. Location: SH-69, Kuna to Amity Rd  
 Requested By: Region 4 Sheet 1 Of 1

Nature and Reason for Revision:

QUANTITY VARIANCE

- Description: This change order makes a price adjustment for quantities over 125% of contract quantity of Item 626L Traffic Control Maintenance. This increase is due to underestimation by the designer, and also in response to public comments that resulted in additional traffic control maintenance.
- Material Requirements: There is no change to material requirements.
- Construction Requirements: There is no change to construction requirements.
- Method of Measurement: There is no change to method of measurement.
- ESTIMATED INCREASE IN CONTRACT ITEMS AT CONTRACT PRICE

626L	Traffic Control Maintenance 525 @ \$33.00	=	\$ 17,325.00
	Estimated Increase	=	\$ 17,325.00

ESTIMATED INCREASE IN CONTRACT ITEMS AT AGREED PRICES

C37626L	Traffic Control Maintenance 2219.75 MNHR @ \$ 41.37	=	\$ 91,831.06
---------	-----------------------------------------------------	---	--------------

Net Estimated Increase	=	\$109,156.06
------------------------	---	--------------

- Contract Time: There is no change to contract time.

(Stub at this line)

Date of authorization: April 1, 2001  
 Date work is to start: April 2, 2001

Discussed With:	Date	Concurrence	
		Y	N
Jeff Miles	April 1, 2001	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Frances Hood	April 1, 2001	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>

Total est. change (+  (-)  \$ 112,680.74

Time Adjustment Approval by:

Y	N	SHA	ACE(0)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	CE <input checked="" type="checkbox"/>	DE <input type="checkbox"/>
			RE <input type="checkbox"/>

FHWA prior approval?  Y  N  N/A

Approval Authority:  
 Name: \_\_\_\_\_  
 (Signature)

Date Change Order is to be sent to the Construction Engineer: June 19, 2001

Distribution: Construction Dist. 3 Engr. Regional Gurnsey RD  
 DRI Other: \_\_\_\_\_

ITD 00403

UTILITY AGREEMENT CHANGE ORDER

(See Contract Administration Manual Section 104.03 and 105.07)



Project No.: NH-F-5121(019)
Key No.: 717
Location: Wrenco Loop to Dover
Contract No.: 6313

Work Auth. Code: P871250
Change Order No.: UTILITY # 1
Date: July 26, 2001

PG&E Gas Transmission – Northwest (name of utility company), you are hereby directed to make the herein described changes from the plans and estimate or do the following work not included in the plans and estimate of your utility agreement with the state of Idaho.

Change requested by Ken Sorenson, Sandpoint Regional Engineer

Description of additional work to be done, materials required, and estimate of cost to be paid by the State. (Attach plans, estimate, and explanation furnished by the utility company.)

CHANGE IN PLANS

The work of this Change Order will include all cost to extend and relocate the vents over the PG&E Gas Transmission lines at Station 1319+50 from their current location at the old highway right of way at each end of the casing out to the new right of way.

Materials will be provided by PG&E Gas Transmission and will meet their specifications.

Work will be performed by PG&E Gas Transmission forces to their standards.

Work will be measured on a time/materials/equipment basis as invoiced by PG&E Gas Transmission.

Payment will be made by utility billing as follows:

ESTIMATE OF EXTRA WORK AT AGREED PRICES

Item X01PGE PG&E Vent Move 1CA @ \$10,000.00

This Change Order does not affect Contract time.

We, the undersigned utility company, hereby agree that if this proposal is approved, we will perform the work detailed above and accept payment at the prices shown for the respective items in accordance with the terms of the original agreement, except as herein provided.

IDAHO TRANSPORTATION DEPARTMENT ACTION:

Ken Sorenson Submitted By

Sandpoint Resident Engineer Title

Accepted: Utility Company

By: Signature

SHA or Authorized Representative

NOTE: This Change Order is not effective until approved by the SHA or an authorized representative.

Construction Engineer Title Date

# SAMPLE AGREEMENT

## STATE/LOCAL AGREEMENT (CONSTRUCTION)

### PARTIES

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the **IDAHO TRANSPORTATION DEPARTMENT**, hereafter called the **STATE** and the >, acting by and through its >, hereafter called the **SPONSOR**.

### PURPOSE

The **SPONSOR** has requested the **STATE** to program a project for federal participation in the costs of constructing >, to consist of >, which has been designated as Project No. >. This agreement sets out the responsibilities of the parties in the construction and maintenance of the project.

The Parties agree as follows:

### SECTION I.

1. This Agreement is entered into for the purpose of complying with certain provisions of the Federal-Aid Highway Act in obtaining federal participation in the construction of the project.
2. Federal participation in the costs of the project will be governed by the applicable sections of Title 23, U.S. Code (Highways) and rules and regulations prescribed or promulgated by the Federal Highway Administration.

### SECTION II. That the **STATE** will:

1. Not guarantee that federal funds herein sought are available or will be made available. In the event federal funds are unavailable, this Agreement is void.
2. Enter into an Agreement with the Federal Highway Administration covering the federal government's pro rata share of construction costs.
3. Advertise, open bids, prepare a contract estimate of cost based on the successful low bid and notify the **SPONSOR** thereof.
4. Award a contract for construction of the project, based on the successful low bid, if it does not exceed the **STATE'S** estimate of cost of construction by more than ten (10)

Example 104.03-7(2)

percent.

5. Obtain concurrence of the **SPONSOR** before awarding the contract if the **SPONSOR'S** share of the low bid amount exceeds the

- amount set forth in Section III, Paragraph 1 by more than ten (10) percent.
6. Provide to the **SPONSOR** sufficient copies of the Contract Proposal, Notice to Contractors, and approved construction plans.
  7. Designate a resident engineer and other personnel, as the **STATE** deems necessary, to supervise and inspect construction in accordance with the plans, specifications and estimates in the manner required by applicable state and federal regulations. This engineer, or his authorized representatives, will prepare all monthly and final contract estimates and change orders, and submit all change orders to the **SPONSOR** for their concurrence. If the **SPONSOR'S** share of any change order exceeds \$1,000.00, the **STATE** will submit a statement to the **SPONSOR** indicating the amount owed by the **SPONSOR**.
  8. Maintain complete accounts of all project funds received and disbursed, which accounting will determine the final project costs.
  9. Upon completion of the project, after all costs have been accumulated and the final voucher paid by the Federal Highway Administration, provide a statement to the **SPONSOR** summarizing the estimated and actual costs, indicating an adjustment for or against the **SPONSOR**. Any excess funds transmitted by the **SPONSOR** and not required for the project will be returned.
  10. Indemnify, save harmless and defend regardless of outcome the **SPONSOR** from the expenses of and against suits, actions, claims or losses of every kind, nature and description, including costs, expenses and attorney fees that may be incurred by reason of any act or omission, neglect or misconduct of the **STATE** in the construction of the work which is the subject of this Agreement.

**SECTION III.** That the **SPONSOR** will:

1. Pay to the **STATE** before the advertisement for bids, the amount of **> AND NO HUNDREDTHS DOLLARS (\$)**, which is the **SPONSOR'S** estimated share of the cost for construction plus preliminary and construction engineering by the **STATE**, and after deducting credit for the **SPONSOR'S** previous deposit of **\$>** as applies to Preliminary Engineering. The actual cost to the **SPONSOR** will be determined from the total quantities

Example 104.03-7(3)

- obtained by measurement plus the actual cost of engineering and contingencies required to complete the work.
2. Upon approval of the lowest qualified bid received, if the **SPONSOR'S** share exceeds the amount set forth in Section III, Paragraph 1, transmit to the **STATE** the **SPONSOR'S** portion of such excess cost.
  3. Authorize the **STATE** to administer the project and make any necessary changes and decisions within the general scope of the plans and specifications. Prior approval of the **SPONSOR** will be obtained if it is necessary, during the life of the

construction contract, to deviate from the plans and specifications to such a degree that the costs will be increased or the nature of the completed work will be significantly changed.

- 4. The **SPONSOR** will designate an authorized representative to act on the **SPONSOR'S** behalf regarding action on change orders. That authorized representative's name is \_\_\_\_\_, Phone No. \_\_\_\_\_.

- 5. When change orders are submitted by the **STATE** for approval pursuant to Section II, Paragraph 7, the **SPONSOR** or its authorized representative shall give approval of same as soon as possible, but no later than ten (10) calendar days after receipt of the change order. If approval is delayed, any claims due to that delay shall be the responsibility of the **SPONSOR**.

- 6. Upon receipt of either of the statements referred to in Section II, Paragraphs 7 and 9, indicating an adjustment in cost against the **SPONSOR**, promptly remit to the **STATE** a check or warrant in that amount.

- 7. Maintain the project upon completion to the satisfaction of the **STATE**. Such maintenance includes, but is not limited to, preservation of the entire roadway surface, shoulders, roadside cut and fill slopes, drainage structures, and such traffic control devices as are necessary for its safe and efficient utilization. Failure to maintain the project in a satisfactory manner will jeopardize the future allotment of federal-aid highway funds for projects within the **SPONSOR'S** jurisdiction.

- 8. Comply with Appendix A, Title 49 CFR, Part 21, attached hereto and made a part hereof.

- 9. Indemnify, save harmless and defend regardless of outcome the **STATE** from the expenses of and against suits, actions, claims or losses of every kind, nature and description, including costs, expenses and attorney fees that may be incurred by

Example 104.03-7(4)

reason of any act or omission, neglect or misconduct of the **SPONSOR** or its consultant in the design, construction, and maintenance of the work which is the subject of this Agreement.

**SECTION IV.**

- 1. All information, regulatory and warning signs, pavement or other markings, traffic signals required, the cost of which is not provided for in the plans and estimates, must be erected at the sole expense of the **SPONSOR** upon the completion of the project.
- 2. The location, form and character of all signs, markings and signals installed on the project, initially or in the future, shall be in conformity with the Manual of Uniform Traffic Control Devices as adopted by the **STATE**.

- 3. The use and occupancy of the right-of-way of this project by utility facilities will be controlled by the STATE'S Policy for the Accommodation of Utilities Within Rights-of-Way of the Federal-aid Systems in the State of Idaho.

**SECTION V.**

- 1. That this State/Local Agreement (Construction) upon its execution by both Parties, supplements the State/Local Agreement (Project Development) by and between the same parties, dated > on Project No. >.

**EXECUTION**

This Agreement is executed for the **STATE** by its Assistant Chief Engineer (Development), and executed for the **SPONSOR** by the >, attested to by the >, with the imprinted corporate seal of the >.

**IDAHO TRANSPORTATION DEPARTMENT**

APPROVED BY:

\_\_\_\_\_  
Assistant Chief Engineer  
(Development)

Example 104.03-7(5)

RECOMMENDED BY:

Approved by ITD  
Steven M. Parry  
Deputy Attorney General  
May 23, 2000

\_\_\_\_\_  
Roadway Design Engineer

**ATTEST:**

>

---

(SEAL)

---

By regular/special meeting  
on \_\_\_\_\_.

EXAMPLE



**104.04 DIFFERING SITE CONDITIONS (CHANGED CONDITIONS)**

When differing site conditions are encountered and the Contractor has followed the procedures previously discussed, a change order must be prepared to cover equitable adjustment in costs and time.

**Type 1 Differing Site Condition**

*“During the progress of work, if subsurface or latent (hidden) physical conditions are encountered at the site differing materially from those in the contract...”*

This type of site condition is a particular kind of circumstantial change that involves an existing condition at the site of work that materially differs from the conditions represented in the contract (specification and plans) documents, **not what was anticipated by either the department or the Contractor**. In highway construction most differing site conditions involve subsurface materials such as soil, rock, groundwater, underground facilities, and debris. The Contractor must prove that actual site conditions encountered differ materially (or significantly) from what the Idaho Transportation Department represented. To determine the merits of a Type 1 Differing Site Condition, the Resident/Regional Engineer must first determine what was actually represented in the contract documents. The project plans, as-built plans from previous projects, soils reports and boring data, and any other documents that were available to the Contractor at the time of bidding must all be reviewed. At this stage the Resident/Regional Engineer is trying to ascertain what the department represented at the time of bidding. If the department did not provide any site information, then no Type 1 Differing Site Condition exists because no conditions were represented to begin with.

Determining if the contract documents do indicate that conditions encountered differ materially from representations made by the contract is the most difficult step because there is no widely accepted definition of what is materially different. Usually only conditions that significantly change how the Contractor should have performed the work are considered materially different. The Resident/Regional Engineer should consult with experts in the construction industry who are experienced in the type of work under issue and with ITD's own in-house experts.

If the conditions are determined to be materially different, then the Resident/Regional Engineer must next determine if reliance on the site information provided by the department is justified. Disclaimers and other contract language can sometimes negate reliance on site conditions provided in the contract documents. A site visit by the Contractor or the Contractor's past experience on similar projects may also negate reliance. If reliance was justified, then the contractor may be able to recover.

**Type 2 Differing Site Condition**

When the department is silent on what conditions exist at the site of work, then a differing site condition exists only when *“...unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site...”*

This is a much broader test of a differing site condition and applies to industry practices in general. For example, if a Contractor is installing pipe and the department provides no soils information on the pipe run, then the Contractor must deal with whatever soil type and groundwater conditions are encountered at the site. If the Contractor expected firm clay and encounters loose, running sand, there is no relief since loose, running sand is not an unusual condition in pipe work. However, if the Contractor uncovered an old railroad line in the middle of a desert, then some relief would be available to the Contractor since old railroad lines are not normally encountered in pipe work.

The department must not withhold any information it has on site conditions to inquiring Contractors. In cases in which the department does not fully know the site conditions, Contractors must adequately determine their risk and bid accordingly.

Whether the condition encounter fits a Type 1 or Type 2 Differing Site Condition, **prompt written** notification must be given, by the party discovering the differing site condition, to the Resident/Regional Engineer. The Resident/Regional Engineer must **promptly** investigate the conditions and must **promptly** notify the Contractor in writing of the determination as to if a differing site condition exists. If a differing site condition exists the contract is adjusted accordingly by change order.

If the Contractor disagrees with the decision issued, the Contractor has the right to pursue a construction claim under section 105.17.

#### 104.05 MAINTENANCE OF TRAFFIC

The Contractor must accommodate traffic either on the roadway through the construction site or on approved temporary detours.

Adequate accommodation of traffic shall be interpreted as satisfied when the following conditions are met:

- A. Dust control is provided.
- B. Sufficient width of roadway is provided to safely accommodate the traffic volume.
- C. A surface of reasonable smoothness is provided that will not result in vehicle or tire damage.
- D. The roadway has adequate horizontal and vertical alignment features to safely accommodate traffic.
- E. Proper and sufficient traffic control devices (i.e., adequate delineation and/or channelization) are employed to guide motorists safely day and night.
- F. The roadside is reasonably free of unnecessary obstacles that are not properly protected. Equipment and materials shall be placed behind guardrail or stored at least thirty feet (30') from the travelway and, preferably, much further to minimize errant vehicle collisions.

**Dust Abatement Expense**

During construction of highways where traffic is carried partially or wholly through the construction area or on detours (either special or temporary), the use of dust abatement water or dust palliative is vital to the safety of the public and will be paid for at State expense. Dust abatement will also be at State expense when it is necessary to protect crops or when it is applied for the health and comfort of people residing near the project. On projects where traffic is composed entirely of the Contractor's equipment with no impact to the general public, water or dust palliative for dust abatement will be at the Contractor's expense.

**Contract Requested Detours**

The specifications allow the Contractor, when authorized, to bypass traffic over detours constructed and maintained by the Contractor in lieu of carrying traffic through the construction areas. The Contractor is responsible for construction and maintenance cost of detours. However, if it can be shown that the detour can affect substantial savings to the State in project costs, it may be appropriate to revise the specifications by change order allowing the Contractor payment for items other than traffic control. Evaluation of environmental impacts to assure that all regulatory requirements are met is necessary when considering detour requests.

**104.06 MAINTENANCE OF PUBLIC HAUL ROADS**

The Contractor shall maintain public highways and streets over which materials for the contract are hauled. Hauling over the State Highway System is not normally a problem, however, hauling over locally administered roads and streets can result in rapid deterioration of these facilities, due to their marginal structural capacities. The specifications require the Contractor to restore such public haul roads to a condition equal to that which existed prior to when hauling started. Typical questions that arise when the local road/street agency demands repair of their facilities are as follows:

What exactly was the condition of the facility prior to the Contractor's hauling operation?

Did other heavy loads contribute to the deterioration?

What constitutes restoration to an *equally-as-good* condition?

The Contractor should be encouraged to meet with the local road officials prior to hauling to discuss these points. State personnel should take a series of photographs of the roadway before and after hauling.