

APPENDIX 6

EXTRA WORK COSTS AND DELAY COSTS SPECIFICATIONS

1. EXTRA WORK COSTS

At the sole discretion of the Department, Extra Work Costs shall be determined based either on (a) a negotiated lump sum, or (b) force account.

1.1 Negotiated Lump Sum

1.1.1 Lump sum Extra Work Costs shall be negotiated based on estimated costs of:

1.1.1.1 Labor;

1.1.1.2 Material;

1.1.1.3 Equipment;

1.1.1.4 Third party fees and charges (e.g. permit fees, plan check fees, review fees and charges);

1.1.1.5 Extra insurance costs and extra costs of bonds and letters of credit;

1.1.1.6 Other direct costs, and

1.1.1.7 A reasonable contingency for Developer risk associated with the lump sum pricing.

1.1.2 Lump sum Extra Work Costs also shall include a reasonable, negotiated markup for Contractor indirect costs, overhead and profit and Developer indirect costs and overhead. The negotiated lump sum shall not include any home office overhead of Developer or its Contractors or any markup on Contractor or Developer direct or indirect costs for Developer profit. Such indirect costs shall exclude cost of funds (whether debt or equity), and Lender charges, damages and penalties, which are not allowable as Extra Work Costs.

1.1.3 The price of a negotiated lump-sum for Extra Work Costs shall be based on the original allocations of pricing to comparable activities, materials and equipment, as indicated in Appendices 2-G(3) and 2-I and other sources of original pricing information (such as the Original Financial Model), whenever possible. If requested by the Department, price negotiations for lump-sum Extra Work Costs shall be on an Open Book Basis.

1.1.4 In pricing any negotiated lump sum for Extra Work Costs, Developer shall include sales or use taxes only on such portion of the Extra Work Costs that does not qualify for exemption under applicable Law.

1.2 Force Account

When Extra Work Costs are determined on a force account basis, Developer will be compensated for the direct costs of labor, materials and equipment used in performing the Extra Work, plus markup for indirect costs, overhead and profit. The direct costs of labor, materials and equipment shall be determined as set forth in Sections 1.2.1 below (“Labor”), 1.2.2 below (“Materials”), and 1.2.3 below (“Equipment Rental”), respectively. Markup for overhead and profit shall be determined as set forth in Section 1.2.4 below (“Costs of Delay, Indirect Costs, Overhead and Profit”).

1.2.1 Labor

1.2.1.1 Extra Work Costs shall include the cost of labor for workers used in the actual and direct performance of the Extra Work. Workers include foremen actually engaged in the performance of the Extra Work. Workers do not include project supervisory personnel or necessary on-site clerical staff, except when the Extra Work is a Controlling Work Item and the performance of such Extra Work actually delays Work on the Critical Path due to no fault of Developer. In such a case, compensation for project supervisory personnel, but in no case higher than a Project Manager’s position, shall only be for the pro-rata time such supervisory personnel spend on the Extra Work. In no case shall an officer or director of Developer, an Affiliate or any Contractor, nor those persons who own more than one percent of Developer, an Affiliate or any Contractor, be considered as project supervisory personnel, direct labor or foremen hereunder.

1.2.1.2 For workers who are not project supervisory personnel, the cost of labor, whether the employer is Developer, an Affiliate, or a Contractor, will be the sum of the following:

(a) Actual Wages

The actual wages paid shall include any employer payments to or on behalf of the workers for health and welfare, pension, vacation and similar purposes.

(b) Labor Surcharge

A labor surcharge, added to the actual wages as set forth in Section 1.2.1.2(a) above. The labor surcharge shall be as set forth in the Department’s publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the Extra Work is accomplished. The labor surcharge shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workers, other than actual wages as defined in Section 1.2.1.2(a) above and subsistence and travel allowance as specified in Section 1.2.1.2(c) below.

(c) Subsistence and Travel Allowance

The actual subsistence and travel allowance paid to the workers.

1.2.2 Materials

1.2.2.1 Department-Furnished Materials

The Department reserves the right to furnish any materials it deems advisable, and Developer shall have no claim for costs and markup on those materials.

1.2.2.2 Developer-Furnished Materials

Only materials furnished by Developer and necessarily used in the performance of the Extra Work may be included in Extra Work Costs. The cost of those materials will be the cost to the purchaser—whether the purchaser is Developer, an Affiliate, or a Contractor—from the Supplier thereof, except as the following are applicable:

(a) Discounts

If a cash or trade discount by the actual Supplier is offered or available to the purchaser, it shall be credited to the Department notwithstanding the fact that the discount may not have been taken.

(b) Non-direct Purchases

If materials are procured by the purchaser by any method which is not a direct purchase from a direct billing by the actual Supplier to the purchaser, the cost of those materials shall be deemed to be the price paid to the actual Supplier as determined by the Department plus the actual costs, if any, incurred in the handling of the materials.

(c) Purchaser-supplied Materials

If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of those materials shall not exceed the price paid by the purchaser for similar materials furnished from that source on contract items or the current wholesale price for those materials delivered to the Site, whichever price is lower.

(d) Excessive Costs

If the cost of the materials is, in the opinion of the Department, excessive, then the cost of the material shall be deemed to be the lowest current wholesale price at which the materials were available in the quantities concerned delivered to the Site, less any discounts as provided in Section 1.2.2.2(a) above.

(e) Evidence of Cost

If Developer does not furnish satisfactory evidence of the cost of the materials from the actual Supplier thereof within 60 days after the date of delivery of the materials or within 15 days after the acceptance of the contract with the Supplier, whichever occurs first, the Department reserves the right to establish the cost of the materials at the lowest current wholesale prices at which the materials were available in

the quantities concerned delivered to the location of the Extra Work, less any discounts as provided Section 1.2.2.2(a) above.

1.2.3 Equipment Rental

1.2.3.1 General Equipment Rental Provisions

(a) Extra Work Costs for the use of equipment shall be determined at the rental rates listed for that equipment in the Department's publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the Extra Work is accomplished, regardless of ownership and any rental or other agreement, if they may exist, for the use of that equipment entered into by Developer or any Contractor; provided that for those pieces of equipment with a rental rate of \$10.00 per hour or less as listed in the Labor Surcharge And Equipment Rental Rates publication and which are rented from a local equipment agency, other than Developer- owned or Affiliate-owned, Extra Work Costs for use of the equipment shall be determined at the hourly rate shown on the rental agency invoice or agreement for the time used on force account work as provided in Section 1.2.3.2 below ("Equipment on the Site"). If a minimum equipment rental amount is required by the local equipment rental agency, Extra Work Costs shall be determined at the actual amount charged. The \$10 figure shall be adjusted annually on July 1 of each year of the Term by the percentage increase, if any, in the CPI since the previous July 1.

(b) If the Department concurs that it is necessary to use equipment not listed in the Labor Surcharge And Equipment Rental Rates publication, a suitable rental rate for that equipment will be established by the Department. Developer may furnish any cost data which might assist the Department in the establishment of the rental rate. If the rental rate established by the Department is \$10.00 per hour or less, the provisions above concerning rental of equipment from a local equipment agency shall apply. The \$10 figure shall be adjusted annually on July 1 of each year of the Term by the percentage increase, if any, in the CPI since the previous July 1.

(c) The rental rates as provided above shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals.

(d) The cost of labor for operators of rented equipment shall be determined as provided in Section 1.2.1 above ("Labor").

(e) For costs of equipment to be eligible for Extra Work Costs, the equipment shall be in good working condition and suitable for the purpose for which the equipment is to be used.

(f) Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

(g) Extra Work Costs exclude the costs of small tools. Individual pieces of equipment or tools not listed in the Labor Surcharge and Equipment Rental Rate publication and having a replacement value of \$500 or less, regardless of whether

consumed by use, shall be considered to be small tools ineligible for Extra Work Cost compensation. The \$500 figure shall be adjusted annually on July 1 of each year of the Term by the percentage increase, if any, in the CPI since the previous July 1.

(h) Rental time will not be allowed while equipment is inoperative due to breakdowns.

1.2.3.2 Equipment on the Site

(a) The rental time to be included in Extra Work Costs for equipment on the Site shall be the time the equipment is in operation on the Extra Work being performed, and in addition, shall include the time required to move the equipment to the location of the Extra Work and return the equipment to the original location or to another location requiring no more time than that required to return the equipment to its original location, except that moving time is not includable in Extra Work Costs if the equipment is used at the site of the Extra Work on other than the Extra Work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no loading and transporting costs will be allowed if the equipment is used at the site of the Extra Work on other than the Extra Work.

(b) The following shall be used in computing the rental time of equipment on the Site:

(1) When hourly rates are listed, less than 30 minutes of operation shall be considered to be 0.5 hour of operation.

(2) When daily rates are listed, less than 4 hours of operation shall be considered to be 0.5 day of operation.

1.2.3.3 Equipment Not on the Site

For the use of equipment moved onto the Site from elsewhere to perform Extra Work and used exclusively for Extra Work, the force account Extra Work Costs shall be determined at the rental rates listed in the Department's publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the Extra Work is accomplished, or, at the Department's election, determined as provided in Section 1.2.3.1 above ("General Equipment Rental Provisions") and at the cost of transporting the equipment to the location of the Extra Work and its return to its original location, all in accordance with the following provisions:

(a) The original location of the equipment to be hauled to the location of the Extra Work shall be subject to the Department's prior approval.

(b) The Extra Work Costs will include the costs of loading and unloading the equipment.

(c) The cost of transporting equipment in low bed trailers shall not exceed the hourly rates charged by established haulers.

(d) The rental period shall begin at the time the equipment is unloaded at the site of the Extra Work, shall include each day that the equipment is at the site of the Extra Work, excluding Saturdays, Sundays and legal holidays unless the equipment is used to perform the Extra Work on those days, and shall terminate at the end of the day on which the use of the equipment ceases. The rental time per day allowable as Extra Work Costs will be in accordance with the following:

(1) Hours includable in Extra Work Costs shall be determined as follows:

Hours Equipment is in Operation	Hours Includable in Extra Work Costs
0	4
0.5	4.25
1	4.5
1.5	4.75
2	5
2.5	5.25
3	5.5
3.5	5.75
4	6
4.5	6.25
5	6.5
5.5	6.75
6	7
6.5	7.25
7	7.5
7.5	7.75
8	8
Over 8	hours in operation

(2) The hours includable in Extra Work Costs for equipment which is operated less than 8 hours due to breakdowns, shall not exceed 8 less the number of hours the equipment is inoperative due to breakdowns.

(3) When hourly rates are listed, less than 30 minutes of operation shall be considered to be 0.5 hour of operation.

(4) When daily rates are listed, 0.5 day will be includable in Extra Work Costs if the equipment is not used. If the equipment is used, one day is includable in Extra Work Costs.

(5) The minimum rental time to be paid for the entire rental period on an hourly basis shall not be less than 8 hours or if on a daily basis shall not be less than one day.

(e) Should Developer desire the return of the equipment to a location other than its original location, the Department will pay the cost of transportation in accordance with the above provisions, provided the payment shall not exceed the cost of moving the equipment to the Extra Work.

(f) Costs of transporting, and loading and unloading equipment, as above provided, will not be allowed as Extra Work Costs if the equipment is used in any way in addition to or other than upon Extra Work accounted for on a force account basis.

1.2.3.4 Owner-Operated Equipment

When owner-operated equipment is used to perform Extra Work, the force account Extra Work Costs for the equipment and operator shall be determined as follows:

(a) Extra Work Costs for the equipment will be determined in accordance with Section 1.2.3.1 above ("General Equipment Rental Provisions");

(b) Extra Work Costs for labor and subsistence or travel allowance will be determined at the rates paid by Developer to other workers operating similar equipment already on the Site or, in the absence of other workers operating similar equipment, at the rates for that labor established by collective bargaining agreements for the type of workers and location of the work, regardless of whether the owner operator is actually covered by an agreement. A labor surcharge will be added to the cost of labor described herein, in accordance with Section 1.2.1.2(b) above ("Labor Surcharge"); and

(c) To the direct cost of equipment rental and labor, computed as provided herein, there will be added the markups for equipment rental and labor as provided in Section 1.3.3 below ("Overhead and Profit").

1.2.3.5 Dump Truck Rental

Dump truck rental shall conform to the provisions in Section 1.2.3.1 above ("General Equipment Rental Provisions"), Section 1.2.3.2 above ("Equipment on the Site") and Section 1.2.3.3 above ("Equipment Not on the Site"), except as follows:

(a) Force account Extra Work Costs for fully maintained and operated rental dump trucks used in the performance of Extra Work shall be determined at the same hourly rate paid by Developer for use of fully maintained and operated rental dump trucks in performing the Work;

(b) In the absence of Work requiring dump truck rental, the Department will establish an hourly rental rate for determining the Extra Work Costs of fully maintained and operated rental dump trucks. Developer shall provide the Department with complete information on the hourly rental rates available for rental of fully maintained and operated dump trucks;

(c) The provisions in Section 1.2.1 above ("Labor") shall not apply to operators of rented dump trucks;

(d) The rental rates listed for dump trucks in the Department's publication entitled Labor Surcharge And Equipment Rental Rates shall not apply;

(e) To the total of the rental costs for fully maintained and operated dump trucks, including labor, there will be added a markup in accordance with Section 1.2.4 below ("Costs of Delay, Indirect Costs, Overhead and Profit"); and

(f) The provisions in Section 1.2.3.4 above ("Owner Operated Equipment") shall not apply to dump truck rentals.

1.2.4 Costs of Delay, Indirect Costs, Overhead and Profit

1.2.4.1 Contractor Markups for Delay, Indirect Costs, Overhead and Profit

(a) To the total direct costs of a Contractor's labor, materials, and equipment other than rented dump trucks, there will be added a markup of 33 percent to the Contractor's cost of labor; 15 percent to the Contractor's cost of materials; and 15 percent to the Contractor's cost of equipment. To the total of the rental costs for fully maintained and operated dump trucks, including labor, there will be added a markup of 15 percent; there will be no separate markup for labor. These markups shall constitute full compensation for all the Contractor's costs of delay, indirect costs, overhead costs and profit associated with the Extra Work, which shall be deemed to include all expense items not specifically designated as direct costs of labor in Section 1.2.1 above, materials in Section 1.2.2 above, and equipment in Section 1.2.3 above. Such expense items include third party fees and charges (e.g. permit fees, plan check fees, review fees and charges, extra insurance costs, and extra costs of bonds and letters of credit). Such expense items exclude cost of funds (whether debt or equity), and Lender charges, damages and penalties, which are not allowable as Extra Work Costs.

(b) The Department will not pay any markup for the Lead Contractor or any other prime Contractor where it subcontracts labor, materials or equipment for Extra Work to a Contractor at a tier lower than the Lead Contractor or other prime Contractor. However, payment to the Lead Contractor or other prime Contractor for a markup on such subcontracted Extra Work may be obtained from Developer (see Section 1.2.4.2(a) below).

1.2.4.2 Developer Markups for Delay, Indirect Costs and Overhead

(a) The Department will pay Developer, for distribution as Developer deems appropriate, a 5 percent markup on the total direct costs of labor, materials, and equipment for the Extra Work performed by a Contractor at any tier (but before any Contractor markups thereon).

(b) There will be added a markup of 23 percent to the total direct cost of Developer's own labor; 5 percent to the total direct cost of Developer's own materials; and 5 percent to the total direct cost of Developer's own rental of equipment. To the total of the rental costs paid directly by Developer for fully maintained and operated dump trucks, including labor, there will be added a markup of 5 percent; there will be no separate markup for labor.

(c) These markups shall constitute the full compensation for all Developer's costs of delay, indirect costs and overhead costs associated with the Extra Work, which shall be deemed to include all expense items not specifically designated as direct costs of labor in Section 1.2.1 above, materials in Section 1.2.2 above, and equipment in Section 1.2.3 above. Such expense items include third party fees and charges (e.g. permit fees, plan check fees, review fees and charges, extra insurance

costs, and extra costs of bonds and letters of credit). Such expense items exclude cost of funds (whether debt or equity), and Lender charges, damages and penalties, which are not allowable as Extra Work Costs.

(d) There shall be paid no markup on the total or any portion of the direct or indirect costs of Developer or its Contractors for Developer profit.

1.2.4.3 No Charge or Markup for Home Office Overhead

There shall be no home office overhead added for Developer or any of its Contractors.

1.2.5 Affiliate Extra Work Costs

1.2.5.1 The direct costs of an Affiliate's labor, materials, and equipment used in performing Extra Work shall be limited in accordance with Section 7.5.1.4 of this Agreement.

1.2.5.2 If an employee or worker of an Affiliate engages in work or tasks that duplicate or repeat work or tasks being performed by an employee or worker of Developer, then none of the Affiliate's labor costs respecting the duplicated or repeated work or tasks shall be allowed as Extra Work Costs.

2. DELAY COSTS

Delay Costs shall be determined as follows:

2.1 Direct Cost of Idle Labor

Compensation for the direct cost of the actual idle time of labor will be determined in the same manner as provided in Section 1.2.1 above ("Labor").

2.2 Direct Cost of Idle Equipment

Compensation for the direct cost of the actual idle time of equipment will be determined in the same manner as determinations are made for force account Extra Work Costs for equipment used in the performance of Extra Work, as provided in Section 1.2.3 above ("Equipment Rental"), with the following exceptions:

2.2.1 If the Delay Cost is attributable to the Relief Event set forth in clause (h) of the definition of Relief Event (Department's failure to make available Project Right of Way), then the right of way delay factor for each classification of equipment shown in the Department's publication entitled Labor Surcharge And Equipment Rental Rates will be applied to that equipment rental rate;

2.2.2 The Delay Costs will be determined for the actual normal working time during which the Delay condition exists, but in no case will exceed 8 hours in any one day; and

2.2.3 The Delay Costs will be determined for the calendar days, excluding Saturdays, Sundays and legal holidays, during the existence of the Delay, except that when Extra Work Costs for rental of equipment are accruing under the provisions in Section 1.2.3.3

above ("Equipment Not on the Site "), Delay Costs shall not include equipment rental costs for equipment not located on the Site.

2.3 Indirect Costs, Expenses, and Profit

2.3.1 Where Delay is to Controlling Work Item

In the case of a Relief Event Delay, Delay Costs shall include the following percentage markups, which shall constitute full compensation for all indirect delay costs (including delay overhead costs), delay expenses and delay profit related to such Relief Event Delay:

2.3.1.1 The percentage markups for the direct costs of a Contractor's labor and equipment set forth in Section 1.2.4.1(a) above ("Costs of Delay, Indirect Costs, Overhead and Profit") as applied to the Contractor's costs of idle time of labor and equipment as determined under Sections 2.1 above ("Direct Costs of Idle Labor") and 2.2 above ("Direct Costs of Idle Equipment"); and

2.3.1.2 The percentage markups for the direct costs of Developer's labor and equipment set forth in Section 1.2.4.2(b) above ("Costs of Delay, Indirect Costs, Overhead and Profit") as applied to Developer's costs of idle time of labor and equipment as determined under Sections 2.1 above ("Direct Costs of Idle Labor") and 2.2 above ("Direct Costs of Idle Equipment"). There shall be no added markup to Developer's or any Contractor's cost of idle time of labor and equipment for Developer profit.

2.3.1.3 Such markups exclude cost of funds (whether debt or equity), and Lender charges, damages and penalties, which are not allowable as Delay Costs.

2.3.2 Where Delay is to Non-Controlling Work Item

If the Delay is to a non-Controlling Work Item, then no indirect costs and expenses, and no profit, of Developer or any Contractor are allowable as Delay Costs.

2.3.3 Home Office Idled Labor and Equipment

There shall be no home office costs of idled labor or idled equipment added for Developer or any of its Contractors.