



Change Order Nuts & Bolts

Presenters:



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Change Order Basics

■ What is a Change Order?

- A *change order* is a written agreement between the owner, contractor and architect upon a change in the work and any appropriate adjustment in the contract sum or contract time.¹
- Increase, decrease or no cost or time impact

1. Construction Change Order Claims, Construction Law Library, Aspen Law & Business, Cushman & Butler, Pg. 5.,1994

Change Order Basics

■ “Extra Work”

- In addition to work required by the contract; or caused by conditions outside the contractor’s contract

■ Contract governs what constitutes “extras” and how contractor will be paid

■ If contract silent on “extras”

- Contractor entitled to reasonable value of work

Change Order Basics

■ Know Your Contract

- Change order procedures
- Notice requirements
- Scope of work

■ Common Elements of a Change Order

- Description of requested changes
- Itemization of costs
- Contractual basis for requested change

Change Order Basics

■ Common causes of change orders

- Owner requested changes
- Contractor suggested changes
 - Value engineering
 - Product substitutions
 - Means & methods
- Design error(s) / Defective specifications
- Differing site conditions
- Owner furnished item delay
- Finalization of project allowances
 - An allowance is an amount specified, or prepared by contractor, within the construction contract for work which is reasonably anticipated but not fully defined at the time of contract.

Example Change Order - AIA

AIA® Document G701™ – 2017

Change Order

PROJECT: (name and address)	CONTRACT INFORMATION: Contract For: Date:	CHANGE ORDER INFORMATION: Change Order Number: Date:
OWNER: (name and address)	ARCHITECT: (name and address)	CONTRACTOR: (name and address)

THE CONTRACT IS CHANGED AS FOLLOWS:

(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

The original (Contract Sum) (Guaranteed Maximum Price) was \$ _____

The net change by previously authorized Change Orders \$ _____

The (Contract Sum) (Guaranteed Maximum Price) prior to this Change Order was \$ _____

The (Contract Sum) (Guaranteed Maximum Price) will be (increased) (decreased) (unchanged) by this Change Order in the amount of \$ _____

The new (Contract Sum) (Guaranteed Maximum Price), including this Change Order, will be \$ _____

The Contract Time will be (increased) (decreased) (unchanged) by () days.

The new date of Substantial Completion will be _____

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

ARCHITECT (Firm name)	CONTRACTOR (Firm name)	OWNER (Firm name)
SIGNATURE	SIGNATURE	SIGNATURE
PRINTED NAME AND TITLE	PRINTED NAME AND TITLE	PRINTED NAME AND TITLE
DATE	DATE	DATE

Example Change Order - ConsensusDocs

ConsensusDocs® 202
CHANGE ORDER

OWNER: []

CONTRACTOR: []

Project: []

Contract Date: []

Change Order No. []

This Change Order is made this [] day of [], []

By [] (Owner), and
[] (Contractor)

for the following changes in the Work:

The Owner agrees to pay for all changes in the Work performed by the Contractor under this Change Order according to the terms of the Agreement. The amount paid by the Owner shall be full compensation for all Work requested and for all effects of this document on the Work. The change, if any, in the Contract Price shall be computed according to one of the following methods.

1. [] No Change
2. [] Costs Plus a Fee []
3. [] Unit Price []
4. [] Lump Sum of \$ []

Unless Item 1 or 4 is marked, the Contractor shall submit promptly to Owner such itemized labor and material breakdowns as Owner may require for Work performed or deleted from the Agreement by this Change Order. The Contractor shall include the cost of such change in its next application for payment in a separate line item.

The change, if any, in the Contract Time resulting from the Work requested by the Change Order shall be determined according to the terms of the Agreement and allows for [] an additional [] deletion of [] ([]) Days.

CONTRACTOR: []

By: _____

Title: [] Date: []

OWNER: []

By: _____

Title: [] Date: []

END OF DOCUMENT.

Example Change Order - ConsensusDocs

Change Order

No. [number]

Date of Issuance: [month, day], 2014	Effective Date: [month, day], 2014	
Project: 2014 Road Improvement Projects	Owner: Village of Germantown	Owner's Contract No.: 1306
Contract: 2014 Road Improvement Projects		Date of Contract: [month, day], 2014
Contractor: [contractor]		Engineer's Project No.: 1306

The Contract Documents are modified as follows upon execution of this Change Order:

Description:

Attachments (list documents supporting change):

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price:	Original Contract Times: <input type="checkbox"/> Working days <input type="checkbox"/> Calendar days
\$ _____	Substantial completion (days or date): _____
[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____:	Ready for final payment (days or date): _____
\$ _____	[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____:
Contract Price prior to this Change Order:	Substantial completion (days): _____
\$ _____	Ready for final payment (days): _____
[Increase] [Decrease] of this Change Order:	Contract Times prior to this Change Order:
\$ _____	Substantial completion (days or date): _____
Contract Price incorporating this Change Order:	Ready for final payment (days or date): _____
\$ _____	[Increase] [Decrease] of this Change Order:
	Substantial completion (days or date): _____
	Ready for final payment (days or date): _____
	Contract Times with all approved Change Orders:
	Substantial completion (days or date): _____
	Ready for final payment (days or date): _____

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: _____	By: _____	By: _____
Engineer (Authorized Signature)	Owner (Authorized Signature)	Contractor (Authorized)
Date: [month, day], 2014	Date: [month, day], 2014	Date: [month, day], 2014
Approved by Funding Agency (if applicable): _____		Date: _____

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CHANGE ORDER

PROJECT:
X

CHANGE ORDER No.: 07-010-17
DATE: 12/3/217
ARCHITECT'S PROJECT No.: 212854.01
CONTRACT DATE: 1/31/2017

The Contract is changed as follows:

Change Estimate #	Description	Amount
018	RFI #35 Issues w ith design for water room at roof	\$ 21,972.00
066	RFI #78 Additional brick demo, framing, and structural steel for South façade brick infill	\$ 2,595.00
133	Install clips throughout ceiling w here concrete beams are cracking	\$ 1,394.00
220	RFI #163 Install firestone tread in lieu of break metal at terrace roof curb for EPDM roofing system	\$ 1,193.00
231	RFI #172 Add flag pole holders to window s	\$ 3,325.00
242	RFI #183 Delete basement bathroom partitions	\$ (6,045.00)
243	RFI #184 Frame shaft wall around horizontal duct at 1st floor bathrooms	\$ 2,317.00
248	Proposal Request #25 Stop install of main ductwork and delete air test and balance from core and shell	\$ (4,647.00)
251	Proposal Request #24 Exterior vestibule changes to ceilings	\$ 20,608.00
256	Proposal Request #26 Install dimising wall at bank	\$ 27,590.00
257	RFI #248 RTU electrical connection: add additional rated fusible disconnect switch	\$ 3,163.00
262	Provide and install VCT in 1st Floor corridor including floor prep at exposed rebar	\$ 4,030.00
Total		\$ 77,495.00

Not valid until signed by the Owner, Architect and Contractor.

The original (Contract Sum) (Guaranteed Maximum Price) was	\$ 9,315,442.00
Net change by previously authorized Change Orders	\$ 3,169,265.43
The (Contract Sum) (Guaranteed Maximum Price) prior to this Change Order was	\$ 12,484,707.43
The (Contract Sum) (Guaranteed Maximum Price) will be <u>(increased)</u> (decreased) (unchanged) by this Change Order in the amount of	\$ 77,495.00
The new (Contract Sum) (Guaranteed Maximum Price) including this Change Order will be	\$ 12,562,202.43
The Contract time will be <u>(increased)</u> (decreased) (unchanged) by	(0) days.
The date of Substantial Completion as of the date of this Change Order therefore is	9-Feb-18

NOTE: This summary does not reflect changes in Contract Sum, Contract Time, or Guaranteed Maximum Price which have been authorized by Construction Change Directive.

ARCHITECT

CONTRACTOR

OWNER

Date _____

Date _____

Date _____



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EXHIBIT X

STRUCTURAL STEEL QUANTITY GROWTH MUTUAL CHANGE ORDER

PROJECT NAME: _____ **DATE OF CONTRACT:** 3/13/2015
CONTRACTOR: _____ **CHANGE ORDER NUMBER:** CO-151231-AD01-IIC-01-Rev. 7
OWNER: _____ **DATE OF CHANGE ORDER:** April 7, 2016 (Rev. 7)

Pursuant to Article 9.0 of the General Conditions for Contracts, the scope of Work in the above Contract between the Parties is changed as follows: (attach additional documentation if necessary)

General:

This change order has been revised to reflect the discussions and agreement reached on April 7, 2016 where both parties agreed to a lump sum settlement of \$4,100,000 to cover the cost for the increase in structural steel quantities based on drawings and documentation issued up to and including February 22, 2016.

Structural Steel Quantity Growth:

The quantity of structural steel is greater than the original quantity provided in Exhibit E-1 (1,808 tons) which was based on the quantities, documentation and drawings provided with the Contract Documents. The revised drawings and documentation issued up to and including February 22, 2016 require a total of 2,105.47 tons of structural steel; the variance is a total of 297.47 tons

The Parties have agreed to adjust the Contract Price by a lump sum price of \$4,100,000

Parties agree that this lump sum price includes all additional cost (including but not limited to quantity growth, delays, schedule delays, disruptions, complexity, changes) associated with structural steel as shown on drawings issued up to and including February 22, 2016.

Adjustment to Contract Price:

The original Contract Price was \$33,000,000

Net change by previously authorized Change Orders (# _____) \$ -236,693.49

The Contract Price prior to this Change Order was \$ 32,763,306.51

The Contract Price will be increased by this
Change Order in the amount of \$ 4,100,000

The new Contract Price including this Change Order will be \$ 36,863,306.51

Adjustment to dates in the Required Contract Completion Date:

The following dates are modified (list all dates modified; insert N/A if no dates modified):

The Required Schedule Milestone Date(s) will be (increased)/(decreased)/(unchanged) by (see below) Days.

N/A

Required Schedule Milestone Dates for Substantial Completion and for Final Completion are not changed as a result of the increase in Structural Steel quantities noted on this Mutual Change Order.

(attach additional documentation if necessary)

Impact to other criteria (insert N/A if no changes or impact; attach additional documentation if necessary): N/A

Contractor acknowledges that the amount agreed for this Change Order includes full compensation for all of Contractor's direct, indirect and delay-related costs relating to the structural steel Contract Work including other agreed structural steel Change Orders to date.

Upon execution of this Mutual Change Order by Contractor and Owner, the above-referenced change(s) to the Work shall become a valid and binding part of the original Contract without exception or qualification, unless noted otherwise in this Mutual Change Order. Except as modified by this and any previously issued Mutual Change Orders, all other terms and conditions of the Contract shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

CONTRACTORS, INC.

Name

Title

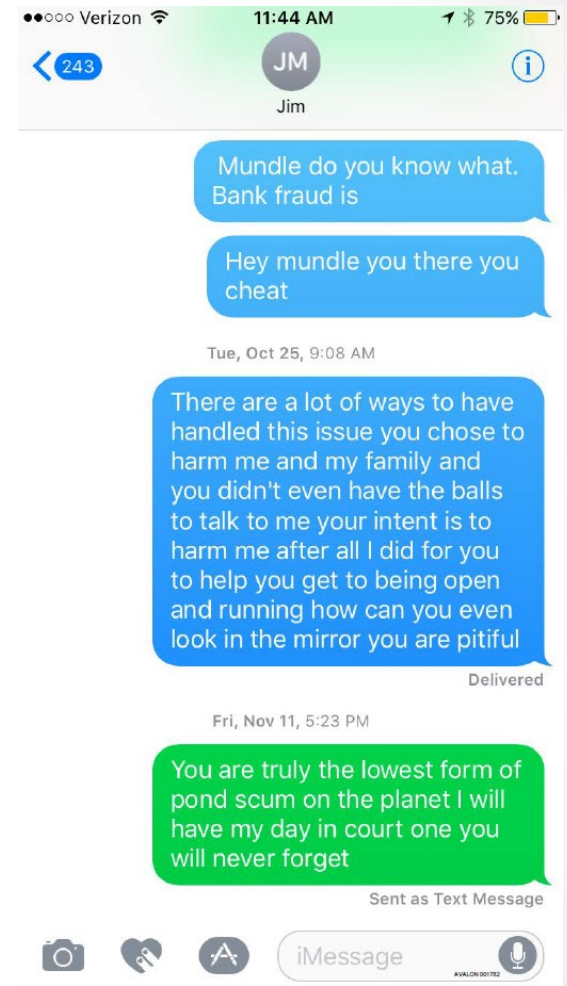
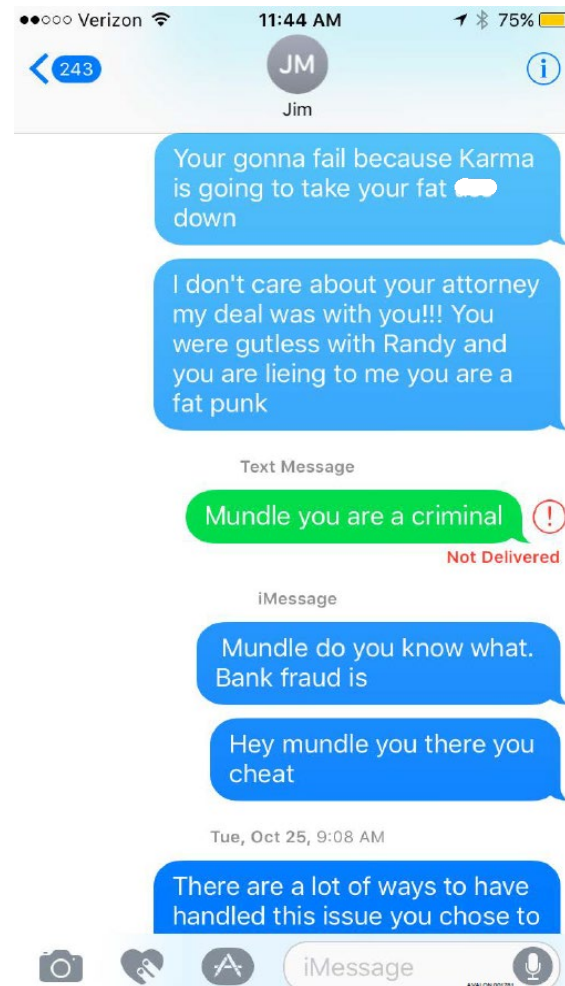
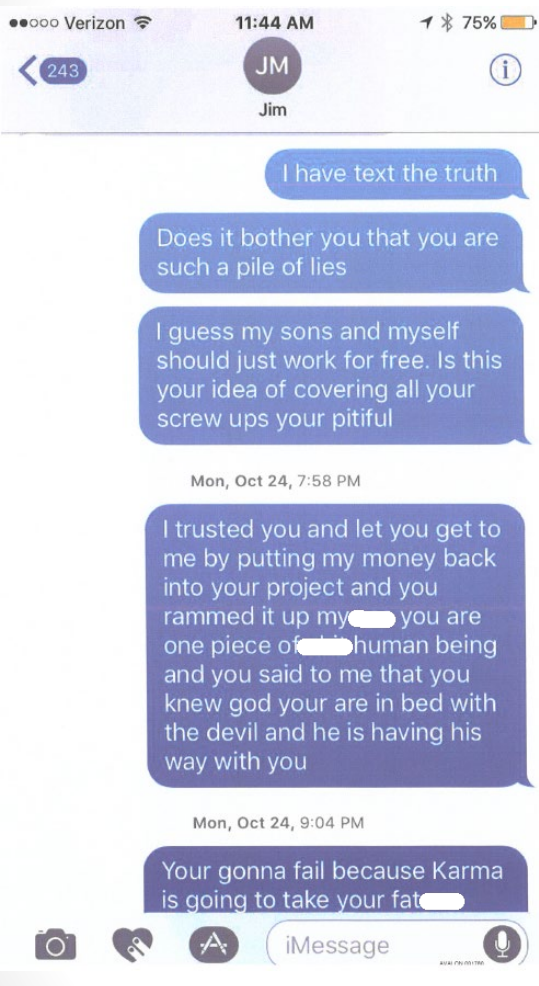
Date of Signing

Name

Title

Date of Signing

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Change Order Basics

■ Change Order vs. Construction Change Directive

Change order	CCD
Owner/Contractor requested	Direction – not a request for additional work
Amendment to the contract by mutual agreement (owner/architect/contractor)	Unilateral change or disputed change
Adjustment to contract price or time agreed <i>before work is performed</i>	Work performed and costs or contract time adjustment TBD usually <i>after the work is performed</i>

Change Order Basics – Proving Extras

- A contractor seeking to receive extras must demonstrate:
 - Work was outside the scope of its contract;
 - Extra item were ordered by owner;
 - Owner agreed to pay extra (words or conduct)
 - Extras were not furnished voluntarily by contractor;
 - Extras not necessary due to any fault of the contractor.
- Standard of proof
 - Clear and convincing

Change Order Basics – Proving Extras

Example Scenario:

- Contract for construction of a house
- Contract scope includes “decorating” of walls with color choices
- During construction owner asks for wallpaper
- Contractor provides owner with wallpaper options and the parties discuss the costs of wallpaper, but not whether it is included in the contract or not
- Contractor installs the wallpaper selected by owner
- Owner disputes this was extra since it falls under “decorating” scope

Q: Is contractor entitled to extras for installing wallpaper?

A: No. *Howard Riley Homes, Inc. v. Wenzel*, 21 Ill. App. 3d 1029, 316 N.E.2d 185 (4th Dist. 1974)

- Contractor was required to notify the owner that this work was extra prior to performing work.
- Contractor installed wallpaper intending to charge extra but never communicated that intent to the owner
- Owner must be given opportunity to consent and decide whether to incur that extra liability

Change Order Basics – Writing Requirement

- Almost all construction contracts require that change orders be in writing
- Can you still recover for work performed without a written change order?



Change Order Basics – Waiver

■ Waiver of writing requirement

- Parties can waive writing requirement orally or by conduct
 - Varies by jurisdiction
 - Pattern of oral directives or conduct vs. isolated act
 - Payment issued for the oral change in work
- General public policy holds that owner should not avoid an obligation to pay for changed work that it offered or knew about merely because written formalities not followed

Change Order Basics – Waiver

■ Example:

- Contractor's work includes stabilizing soil to required compaction levels before building
- After work begins, the parties discover excess moisture levels causing compaction issues
- Architect orally directs the use of lime as drying agent
- During discussion, Architect disputes this is an extra and refuses to authorize a change order
- Contractor proceeds with work and sues for unpaid "extras"
- Contract contains a writing requirement that *"no claim for extra work or materials will be allowed unless ordered in writing by the owner or architect"*

Q: Did the architect waive the writing requirement?

A: No.

R&R Const. Co. v. Junior College Dist. No. 529, Olney, 55 Ill. App. 3d 115 (1977)

- *Architect's conduct did not waive writing requirement since he made clear it was not an extra and refused to issue a CO*
- *This was not extra work since labor and materials that are "incidental and necessary" to complete the work are not regarded as extras*

Change Order Basics – Cardinal Change

- Changes so excessive it constitutes a breach of the contract
- Drastically require contractor to perform work materially difference from that originally bargained for
 - Examples of cardinal changes
 - *Changing the backfilling method on a civil works project*
 - *Addition of a hospital wing expanding construction costs by a third*
 - *Substantial change in quantity of materials*
 - *Changing the method or schedule of payment exposing contractor to risk*
- Remedy
 - Voids the contract
 - Contractor not obligated to continue performance
 - May seek recovery for its total costs

Change Order Basics – Takeaways

■ Do not stop working

- Contracts generally require contractor to proceed with work pending resolution of disputes over costs/time
- Refusal to perform may be a breach

■ Give notice immediately

- contractor should give notice to owner if it deems any set of circumstances call for extra work

■ Document changes

- If no change order is issued before contractor directed to proceed, document all communications and directives provided

Change Order Process

- Step 1: Review Notice Provisions
- Step 2: Define the Nature of the Claim
- Step 3: Select a Method for Proving Delay
- Step 4: Prove Entitlement
- Step 5: Select a Method for Proving Damages
- Step 6: Quantifying Damages
- Step 7: Preparing Exhibits
- Step 8: Preparing Damage Summary Sheet
- Step 9: Organizing the Claim
- Step 10: Select Dispute Resolution Forum

Change Order Process

■ Step 1: Review Notice Provisions

- Review the contract documents to identify the notice provisions. For instance, AIA contract forms require a 14 day notice from the event or recognition of the event.
- What is constructive notice?
 - The Owner knew, or should have known, of a particular issue.
 - May include verbal notices, discussions, email, meeting minutes, etc.
 - Owner has not been prejudiced by lack of notice.

Meeting Date: February 27, 2008 Project: Steel Building

Project No.: 07-010 Progress Meeting No.: 08

Attendees: Todd Piccone Ema Rankin Chuck Furlano
Maria Cole Will Gillis Bill Newell

Distribution: Same as Above

Item	Responsibility	Due Date	Last Modified
1. Field Observation- Review Attached RFI Log <ul style="list-style-type: none"> Regarding RFI #20 MWCC will resend RFI with loads from OTIS and proposed tube steel configuration. Regarding RFI #12 MWCC will send RFI with drawings from in house Engineer. Upcoming RFIs Include: Procedure for floor leveling with mix design 	MWCC klipp	Weekly	02/20/2008
2. Review Submittals <ul style="list-style-type: none"> MWCC to set up meeting with Interior Resource Group for Flooring/Countertops Submittal for Review MWCC to set up meeting with Terracotta Installer for Submittal Review In the future the submittal log will be printed as outstanding items only Upcoming Submittals include: Mechanical, Electrical, Roof, and Structural Steel 	MWCC klipp	Weekly	02/20/2008
3. Review of Overall Construction Schedule- Review Attached 3 Week Schedule <ul style="list-style-type: none"> Need 2nd 4th Floor Clearance from Boulder Environmental. Need dates for decision on Terrace to proceed on remaining tenant finish items MWCC will have Kumar look at Elevator Pit Rebar and Monroe Newell will also send a Field Report of what they looked at yesterday. MWCC will begin to touch on GMP Schedule during this part of OAC Meeting 	MWCC	Weekly	02/20/2008
4. Potential Problems/Field Conflicts <ul style="list-style-type: none"> MWCC continues to work on the issue of recycling of old windows Project Team to field verify a couple of measurements for potential 3 foot bust on roof dimension which could affect the elevator and RTU location. MWCC to start terrace work in approximately two weeks. 	ALL	Weekly	02/20/2008
5. Review Change Estimate Log <ul style="list-style-type: none"> Once RFI answers and other items are in MWCC will have all CE pricing finalized 	ALL	Weekly	02/20/2008

Meeting Minutes



MEETING MINUTES

No. OAC51

Englewood, CO 80112

Phone: (303) 930-9000

Fax: (303) 930-9001

PROJECT TITLE: _____

MEETING DATE: 11/12/2013

SUBJECT: OAC

LOCATION: 1 Field Office

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>STATUS</u>	<u>STARTED</u>	<u>DUE</u>	<u>BALL IN COURT</u>
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SCHEDULE

51-02	WEEKLY SCHEDULE REVIEW Blynn reviewed the five week look ahead schedule with the team.	CLO	11/12/2013		DEN - BK
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ASI-015 was issued on Monday the 11th. The electrician was able to start work on the 12th. The project will be delayed by 7 calendar (5 working days)

Days Ahead/Behind Schedule: The revised schedule shows a finish date of March 25th.

BUDGET

20-03	SECTION 3 REPORTING (Items removed for clarity - see previous minutes for more details) 2013.08.20 and their subcontractors have hired 67 craft for this project.	OLD	3/25/2013		DEN - SA
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Change Order Process

■ Step 2: Define the Nature of the Claim

- Access to the project site
- Right of way
- Utility relocation
- Unidentified utilities
- Differing site conditions
- Relocation of tenants
- Approvals from authorities
- Payment delays
- Design defects
- Defective specifications
- Tardy shop drawing processing
- Inspection delays
- Unavoidable calamities
- Owner interference
- Failure to coordinate
- Unusual weather
- Labor disputes
- Acts of God
- Delays in transportation
- Governmental acts
- Delayed NTP / contract award
- Inappropriate stop work orders
- Owner furnished items
- Over-inspection
- Constructive changes

Change Order Process

- Step 3: Select a Method for Proving Delay
 - Impacted As-Planned Schedule
 - Time-Impact Analysis
 - Windows Analysis
 - Collapsed or “But-For” As-Built Schedule
 - As-Planned vs. As-Built Comparisons

Change Order Process

■ Step 4: Prove Entitlement

- Entitlement: the fact of having a right to something
 - ...proving that you are owed a change order
- Prepare a narrative proving the entitlement of each claim.
 - Cite the contract
 - Cite the basis of the issue/change
 - Owner Change
 - Plan Revision
 - RFI Response
 - ASI, etc.

Change Order Process

- Step 5: Select a Method for Proving Damages
 - Actual Cost Method
 - Estimated Cost Method
 - Total Cost Method
 - Modified Total Cost Method
 - Measured Mile Method

Change Order Process

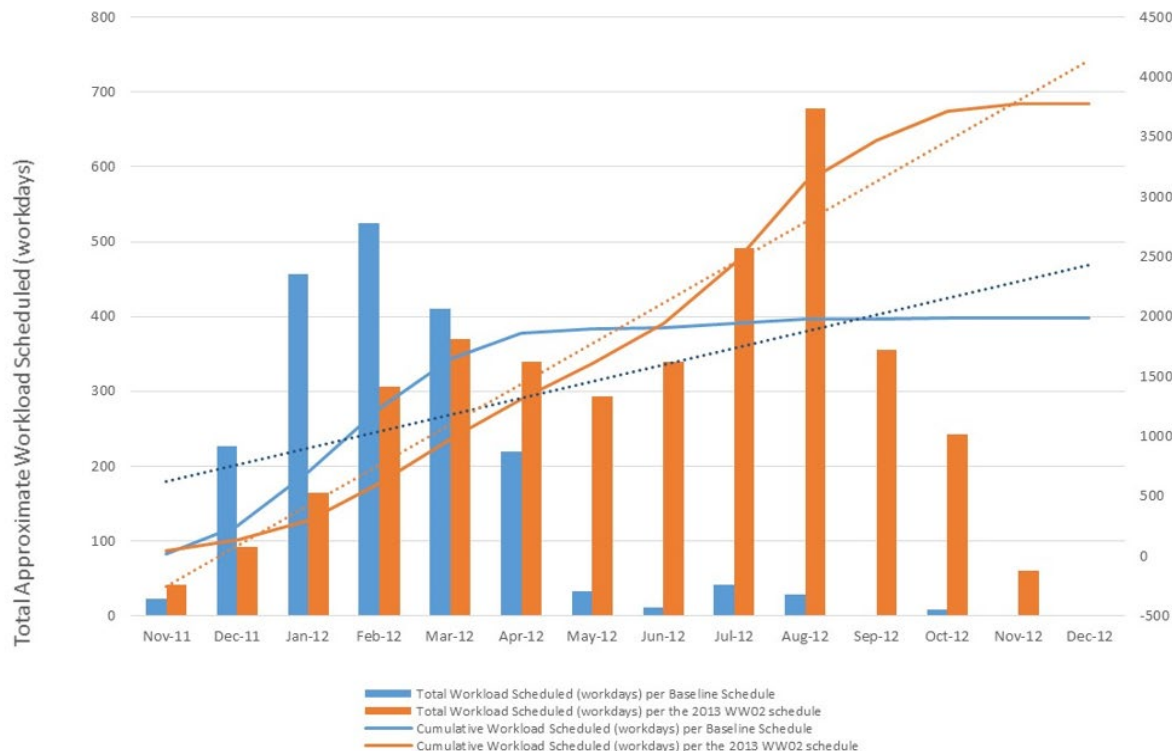
■ Step 6: Quantifying Damages

- General Conditions
- Home Office Overhead
- Idle Equipment
- Lost Productivity
- Material Escalation
- Labor Escalation
- Subcontractor Escalation
- Cost of Additional Work
- Interest / Lost Profits
- Attorney Fees
- Cost of Claim Preparation
- Bond Fee and Insurance Premium

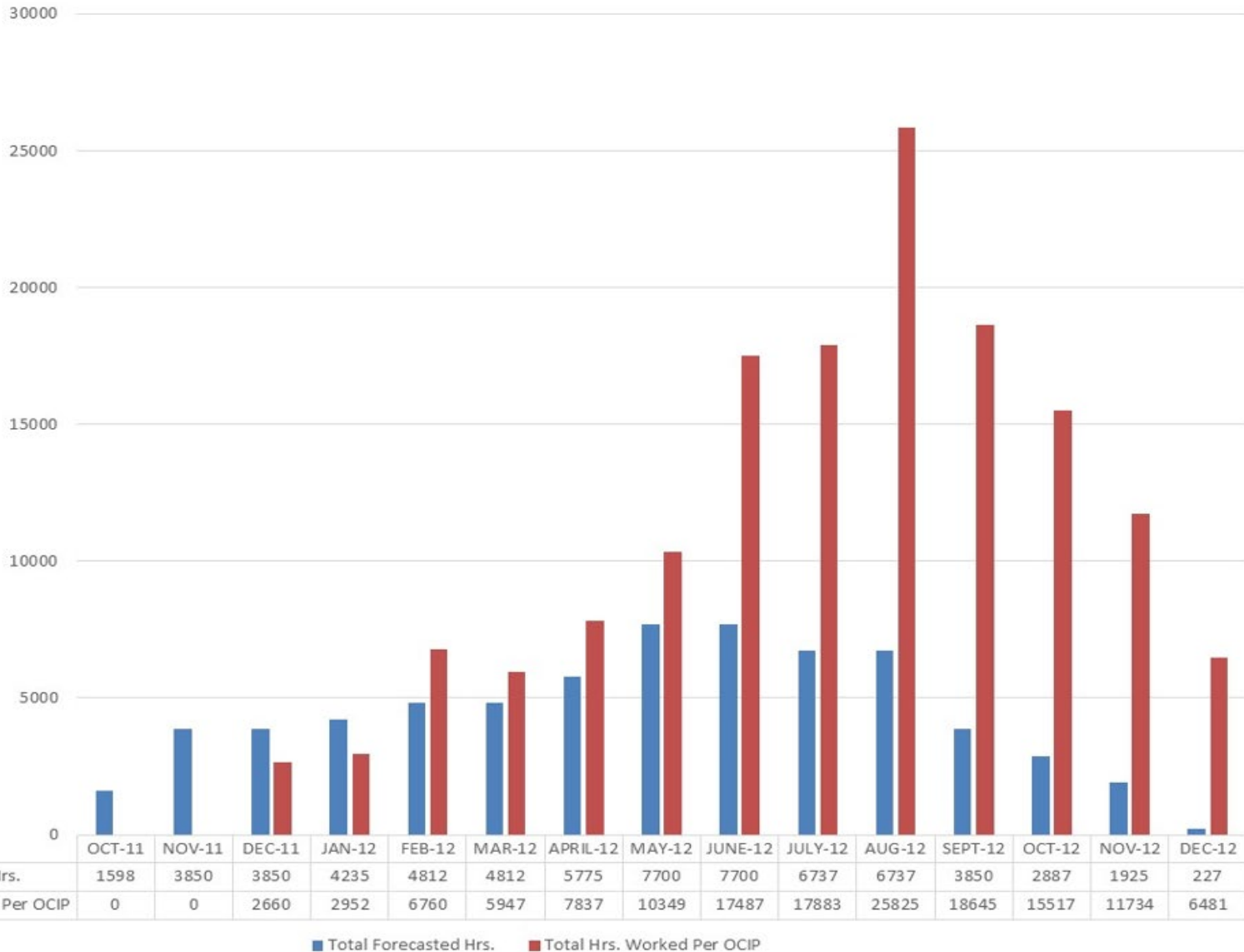
Change Order Process

■ Step 7: Preparing Exhibits

- Create at least one graphic to clearly illustrate each damage component and delay component.



Actual vs. Planned Labor Hours



Change Order Process

■ Step 8: Preparing Damage Summary Sheet

- Prepare a one page Damage Summary Sheet with the following columns:

A	B	C	D	E
Item	Claim Analysis	Exhibit No.	Itemized Cost	Subtotal
1.) General Conditions	Modified Total Cost	I	654,554.00	654,554.00

Change Order Process

■ Step 9: Organizing the Claim

- Section 1: Executive Summary
- Section 2: Documents Reviewed
- Section 3: Background
- Section 4: Damage Summary
- Section 5: Entitlement
- Section 6: Monetary Damages
- Section 7: Schedule Impacts
- Section 8: Conclusions
- Section 9: Exhibits & Timeline
- Section 10: Resume & Rate

Change Order Process

- Step 10: Select Dispute Resolution Forum
 - If the claim cannot be resolved using direct negotiation, select one of the following dispute resolution forms (if not prescribed in contract):
 - Architect or Engineer or Engineers Ruling
 - Mediation
 - Arbitration (binding or non-binding)
 - Litigation



Questions?



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