

Approved:

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Responsible Division: Construction Management

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STANDARD PROCEDURE FOR PROCESSING CHANGE ORDERS

PROCEDURAL STATEMENT:

The Standard Procedures for Processing Change Orders sets forth the process for modifying contract terms and conditions in accordance with Policy 27-010(P) and Ohio law.

AUTHORITY:

*Ohio Revised Code 126.30, 127.16, 5517.02, 5525.11, 5525.14, and 5525.99.
Code of Federal Regulations 635.*

REFERENCES:

Construction and Material Specifications section 109

Manual of Inspection Procedures section 109

Appendix - List of Forms

SCOPE:

All construction projects, District Deputy Directors, District Construction Offices, and the Division of Construction Management.

Building construction change orders will continue to be controlled by the Office of the State Architect (part of DAS), the Ohio Board of Building Standards, and good practice in the building construction industry.

BACKGROUND AND PURPOSE:

This policy and procedure will ensure fair and reasonable prices for change orders, prevent compromising of the competitive bidding process, prevent the appearance of favoritism to any contractor and minimize the risk of fraud.

ABBREVIATIONS:

ACFA: Actual Cost of Force Account

Blue Book: Rental Rate Blue Book for Construction Equipment

C&MS: Construction and Material Specifications

SM: SITE Manager

DCE: District Construction Engineer

DDD: District Deputy Director

ECFA: Estimated Cost of Force Account

EWCO: Extra Work Change Order

MOP: Construction Inspection Manual of Procedures

NHS: National Highway System

ORC: Ohio Revised Code

RWCO: Regular Work Change Order

DEFINITIONS:

Change Order: A written order issued by the Department to the Contractor, covering changes to contract terms and conditions, plans and/or quantities, within or beyond the scope of the Contract and establishing the basis of payment and time adjustment for the work affected by the changes.

Contract Limits: The amount a contract pay item may be increased or the cost of a new item of work that may be added to a project without competitive bidding or Controlling Board review. *ORC 5525.14* sets these limits as:

<u>Original Contract Price</u>	<u>Contract Limits</u>
\$500,000 or lower	\$25,000
\$500,001 to \$2,000,000	5% of Total Contract Price
Over \$2,000,000	\$100,000

Extra Work:

1. An increase in a bid item quantity for payment beyond Contract Limits.
2. A new pay item.

Final Measurements: A legal term used in *ORC 5525.14* which means an increase in an original bid item, that was required to accomplish the originally planned work within the original work limits, but resulted in a payment on the bid item that exceeded the Contract Limits. Change orders for Final Measurements are not subject to Controlling Board approval, but must be reported quarterly to the Controlling Board. Final Measurements are not limited to pay quantities determined during finalization, but may occur any time during the project.

Force Account: Payment for work directed by the Engineer based on the actual cost of labor, equipment, materials furnished, overhead, and profit in accordance with C&MS Section 109.05.

NHS: The system of roadways so designated by the *National Highway Systems Act of 1995*.

Project Limits: Project limits are points on the mainline centerline of construction where the proposed improvement, as described in the project description on the title sheet of the plans (excluding incidental construction), begins and ends. Incidental construction includes all work required to complete a project in addition to the primary purpose for the improvement.

PROCEDURE STATEMENT:

I. General

- A. Work added or modifications to the Contract Documents made by change order must be only those which are necessary and integral to the completion of the project as intended by the original plan. Work that is not necessary to complete a project as originally intended shall not be added to a project by change order and shall be contracted through the Department's competitive bidding process or the Director's emergency contracting authority. Convenience or lower costs are not valid reasons to avoid the competitive bidding requirements of State law.
- B. Added work must be within the existing Right-of-Way, covered by the approved environmental document and waterway and miscellaneous permits, and within the project limits stated in the plans. If necessary, the District Deputy Director shall acquire additional Right-of-Way and/or reevaluate and update the approved environmental document and permits. If necessary, project limits shall be modified utilizing the forms contained in this procedure.
- C. Each District shall develop and implement a collaborative process whereby the Production, Planning and Highway Management Departments and the Construction Office reach consensus on the need for a change order before it is recommended in SM (TRNS.PORT SITEMANAGERTM).
- D. The District Construction Offices shall determine the terms and conditions (e.g. scope of work, compensation, deduction, etc.) of change orders in accordance with this procedure, the C&MS and the MOP.

- E. All change orders shall be processed expeditiously to ensure prompt payment in accordance with *ORC 126.30*.
- F. The District Construction Offices shall develop all documentation, with the exception of formal Controlling Board requests, required for the processing of change orders.
- G. Each District Construction Office must subscribe to the Blue Book by: Printed book; CD-ROM, or Internet access and verify all equipment rates submitted by the Contractor.
- H. All change orders shall be entered in SM (TRNS.PORT SITEMANAGER™).
 - 1. The terms, conditions, and justification for such change orders shall be fully documented in the “Explanation of Necessity” section of the change order.
 - 2. Applicable reason code(s) must be entered for each line item or grouping of items for the change order. The OCA will maintain a list of change order reason code descriptions on its website.
- I. The Deputy Director of the Division of Construction Management may instruct that a change order be prepared and approve such change order after consultation with the District and the Director.

II. **Regular Work Change Order (RWCO)**

- A. A RWCO shall only be used for the following:
 - 1. Contract quantity adjustments:
 - a. Increases and decreases of contract quantities to meet field conditions and design modifications as provided in C&MS Section 109.04 within the Contract Limits.

- b. Decreases in Extra Work quantities.
2. Adjustments for contract specified payments or deductions:
 - a. Adjustment of a contract price when the item is reduced by more than 25 percent as provided in C&MS Table 104.02-2.
 - b. Price adjustments as specified in the Proposal.
 - c. Price adjustments as specified in an individual pay item's specifications, such as, but not limited to, price adjustments specified in C&MS Sections 401, 446, 448, and 451 or the Proposal.
 - d. Compensation for eliminated items as provided in C&MS Section 104.02.E and 109.04.
3. Changes in the Contract Documents or specifications.
4. Changes in materials requirements as follows:
 - a. Allow a substitute material because of an area-wide material shortage or the specified material is not available.
 - b. Acceptance of a superior material at no additional cost to the project.
 - c. Acceptance of undocumented material incorporated into the work and performing satisfactorily.
 - d. Department ordered change in materials.
 - e. Accept with a cost savings, non-specification material incorporated

into the work that is performing satisfactorily according to the procedure on Acceptance of Non-specification Material 510-09(SP).

5. Revise an interim completion date or a contract completion date.
 - a. The change order shall be for zero dollars.
 - b. For change orders postponing the interim/contract completion date the “Explanation of Necessity” shall include one of the following statements:
 - (1) The Department accepts the contractor’s early completion schedule in accordance with C&MS 108.02.B.2. The amended completion date is _____. (Reason Code 32)
 - (2) The contractor experienced an excusable, non-compensable delay due to (insert reason) as determined in accordance with C&MS 108.06.B. The revised (interim/contract) completion date is _____. (Reason Code 33)
 - (3) The contractor experienced an excusable, non-compensable delay due to weather as determined in accordance with C&MS 108.06.C. The revised (interim/contract) completion date is _____. (Reason Code 34)
 - (4) The contractor experienced an excusable, compensable delay due to (insert reason) as determined in accordance with C&MS 108.06.D. The revised (interim/contract) completion date is _____. The allowable delay costs will be calculated in accordance with C&MS 109.05.D and processed on a subsequent change order. (Reason Code 35)

- c. Attach to the change order copies of analysis and progress schedules with support documentation or other justification substantiating the duration of the revision to the interim/contract completion date.
6. Implement non-performances that result from the acceptance of a Value Engineering Change Proposal (VECP).
7. Other reasons as authorized by Administrative Rulings issued by the Division of Construction Management.

III. **Extra Work Change Order (EWCO)**

- A. An EWCO shall only be used for the following:
 1. Increase of contract quantities to meet field conditions and design modifications as provided in C&MS Section 109.04 and are only those quantities that are beyond the Contract Limits.
 2. The addition of new items of work.
 3. Increase of quantities previously established by an EWCO.
 4. Project termination costs in accordance with C&MS Section 109.04 when the contract is terminated for convenience of the Department under C&MS Section 108.09.
 5. Force Account (commonly referred to as Time and Materials (T&M)) in accordance with C&MS Section 109.05.C and Section IV of this procedure.
 6. Implement an accepted VECP according to the procedure on Value Engineering 510-008(SP) and payment of the Contractor's share of the

VECP savings.

7. Payments that differ from fixed amounts established in the Proposal by the Department for specified items.
 8. Final payment for an item that differs from the lump sum amount bid by the Contractor.
 9. Payment for allowable delay costs.
 10. The payment of interest on delays in processing payments. Interest will be calculated according to *ORC 126.30*. In all cases interest shall be a separately itemized payment utilizing the item code and description for interest that can be found on the Item Master. Interest shall not be included as part of a negotiated price.
 11. Compensate the Contractor for damages associated with claims in accordance with recommendations issued by the Dispute Review Board in accordance with the Dispute Review Board Process, decisions issued by the Director's Claims Board in accordance with the Dispute Resolution and Administrative Claims Process, and decisions rendered by the Ohio Court of Claims.
- B. The EWCO shall include a "Description of Work" and when necessary a "Supplemental Description".
1. If the EWCO is for an increase in a contract quantity, use the existing "Description of Work" for that item.
 2. If the EWCO is for the addition of a new item of work use a "Description of Work" contained in the Item Master. Also use a "Supplemental Description" that clearly identifies the work for which the EWCO is being processed.

- C. The EWCO “Explanation of Necessity” section shall include, at a minimum, the following information, if applicable:
1. A thorough discussion of all the agreed upon or imposed terms and conditions.
 2. Basis of compensation (e.g. negotiated prices (109.05.B) or force account (109.05.C)).
 3. For change orders that are for an increase in quantity for an original bid item include a reference to the RWCO that increased quantities to the Contract Limits.
 4. A statement indicating that the FHWA Transportation Engineer has been consulted.
 5. A statement regarding federal participation eligibility and the effect on Federal project funding.
 6. Whether the work will require additional time. Use one of the following statements:
 - a. The additional work will not delay work on the critical path and will not delay the project.
 - b. The additional work will delay work on the critical path and will delay the project ____ days. A change order postponing the contract completion date will be processed.
 - c. The additional work will delay work on the critical path but will not delay the project.
 - d. At this time, it is unknown how the additional work will affect the work on the critical path and time to complete the project. The

contractor will perform and submit a schedule analysis within 30 days of the completion of the work authorized by this change order. A subsequent change order revising contract time will be processed, if warranted.

7. If the EWCO includes any work that is subject to price adjustments as specified in the Proposal.
 8. If any additional cost of maintaining traffic is included in the agreed prices.
 9. If any additional cost to revise or provide a Storm Water Pollution Prevention Plan is included in the agreed prices.
 10. The details of a Contractor's reservation of rights in accordance with Section X.B.3.a.
 11. If the change order is compensating the Contractor for damages associated with a claim the description of the change order shall include a disclaimer stating: "The execution of this document constitutes full settlement of Dispute or Claim Number () and all rights for any additional compensation based on this cause are waived."
- D. All supporting documentation, including the complete cost analysis, shall be attached to the copy of the EWCO on file in the District.

IV. **Force Account**

- A. An EWCO for the Estimated Cost of Force Account (ECFA) shall be processed if the amount of the force account work is likely to be greater than \$100,000 and is expected to take more than two weeks to complete. When the amount of the force account work is likely to be less than \$100,000 and is expected to take less than two weeks to complete, an EWCO for the Actual Cost of Force Account (ACFA) can be processed without processing an associated ECFA.

B. Estimated Cost of Force Account (ECFA)

1. All ECFA's shall be paid by an EWCO.
2. The ECFA shall state the estimated costs as determined by a cost analysis or estimate based on similar bid items according to the C&MS and MOP.
3. An original affidavit by the Contractor shall be attached to the change order stating:

"Labor rates shown are the actual rates paid for labor, unit prices for materials and rates for owned and rented equipment have been estimated on the basis they are not in excess of those charged in the area in which the work will be performed."

4. The District will process estimates on ECFA every two weeks as the force account work is performed.
5. Approval of an ECFA change order allows payments as the work is performed up to the estimated change order amount.

C. Actual Cost of Force Account (ACFA)

1. After the work covered by an ECFA is complete or if an ECFA is not necessary as described above in Section IV.A of this procedure, the District shall prepare an ACFA reflecting the actual total cost in accordance with the C&MS and MOP and substantiated by a summary of the actual cost of performing the force account work.
2. The difference between the actual cost and the original estimated cost of the force account work shall be entered as a plus (positive), minus (negative), or zero, as the case may be, and labeled "Difference Between Actual Cost and Estimated Cost of Force Account Work, Authorized by Change Order Number xx."

- a. If the difference is positive, another EWCO must be used to authorize payment beyond the ECFA.
 - b. If the difference is negative, an RWCO shall be used to non-perform the unused balance of the ECFA.
 - c. If the difference is zero, an RWCO shall be used to document that the actual costs equaled those shown on the ECFA.
3. The “Explanation of Necessity” shall include the reasons for the difference in cost and any conditions encountered that differ from those originally anticipated, in order to substantiate final payment.
 4. An original affidavit by the Contractor shall be attached to the change order stating:

“The name, classification, total hours worked and rates paid each person listed on the Summary of Actual Cost are substantiated by actual records of persons employed on the force account work. All unit prices for materials and rates for owned and rented equipment listed on the Summary of Actual Costs are substantiated by actual records of materials and equipment actually used in performance of the force account work and the price of any owned equipment not previously agreed upon does not exceed prices charged for similar equipment in the area in which the work was performed.”

V. Federal Highway Administration (FHWA) Consultation and Concurrence

- A. On all Federal oversight projects [per 23CFR635.120(a)(b) &(c)]:

Following authorization to proceed with a project, all major changes in the plans and contract provisions and all major extra work shall have formal approval by FHWA in advance of their effective dates. (23 CFR635.120 (a))

For non-major changes and for non-major work, formal FHWA approval is necessary but such approval may be given retroactively. (23CFR635.120(b))

All change orders amending contract time shall be submitted for approval by FHWA. When possible, change orders for contract time resulting from contract changes or extra work, should be submitted at the same time as the change order for said contract change or extra work for approval by FHWA. (23CFR635.120(c))

- B. The District shall consult with the appropriate FHWA Transportation Engineer when a major change is first contemplated on a full Federal oversight project.
1. This consultation may be by e-mail or by telephone with a follow up e-mail. The results of this consultation shall be documented in the project file and in the change order "Explanation of Necessity" as indicated in Section III.C. of this procedure.
 2. The e-mail shall have the Project Number, PID, and the County-Route-Section in the subject line and include adequate information to determine the nature and extent of the proposed change.
 3. The purpose of the consultation is to determine the eligibility of the change for Federal participation, the effect on Federal project funding, and to obtain approval to execute the change order under the terms and conditions agreed upon in this consultation.
- C. FHWA considers a change order to be a major change if it:
1. Results in a project cost increase exceeding the lesser of \$250,000 or 5% of the award amount.
 2. Alters the planned access controls, highway operations (highway operational characteristics), or work limits.

3. Results in new environmental impacts.
- D. FHWA does not participate in maintenance items or the purchase of surplus material.
 - E. FHWA does not participate in the repair of completed permanent items of work damaged by traffic and compensated under C&MS Section 107.15 with the following exceptions:
 1. FHWA participation is allowed on Federally-funded projects off the NHS as determined by State law and policy.
 2. FHWA participation is allowed on Federally-funded projects on the NHS when the proximate cause of damage was the result of traffic being diverted from its normal path by construction activity.
 - F. Copies or electronic versions presented through an ftp website or document management system of all change orders, including support documentation, shall be submitted to FHWA for approval on full federal oversight projects only. (Final approval of all major and minor change orders by FHWA based on the change order documentation review is permitted following execution of the change order by ODOT subject to the provisions of Section V of this procedure.)
 - G. ODOT approves change orders on behalf of FHWA for state administered federally funded projects. Change Order documents are retained by ODOT only on state administered federally funded projects.
 - H. The Division of Construction Management will coordinate the review and advance approval of all claims on full Federal oversight projects with FHWA.
 1. The Division of Construction Management will provide notification to FHWA upon receipt of Notice of Intent to File a Claim.

2. The Division of Construction Management will provide a copy of all claims decisions for review and advance approval prior to final execution of any change order that may result from the decision.
- I. Federal oversight project criteria are provided in the ODOT/FHWA Stewardship & Oversight agreement which can be found at www.fhwa.dot.gov/ohdiv/soa.htm. Any questions regarding the status of Federal oversight projects can be directed to the FHWA Transportation Engineer assigned to your District. The current FHWA Transportation Engineer map can be found at www.fhwa.dot.gov/ohdiv/

VI. Program Manager Consultation and Concurrence

A. District Program Manager

1. Change orders on district funded projects must be approved by the appropriate district program manager in accordance with processes established by the DDD.

B. Central Office Program Manager

1. Change orders on projects funded by a Central Office program must be approved by the Program Manager (PM) if the change order amount exceeds the specified threshold for the program. Districts shall consult the appropriate PM when they first anticipate a change order over the threshold. The OCA will maintain a list of Program Managers and thresholds for each program on its website.
2. The Deputy Director of the Division of Construction Management may require Districts on specific projects to consult with a PM on change orders below the normal program threshold.

VII. Cooperation with Local Participating Agency (LPA) and Notice (ORC 5521.041)

Prior to approving any change order for an item containing local funding the District shall:

- A. Discuss with an agent of the LPA the circumstance giving rise to the change order.
- B. Provide written notice to the LPA detailing the proposed change order.
- C. Obtain written acknowledgement of the LPA's receipt of notice of proposed change order.

Attach the written notice and written acknowledgement to the change order. Except for Contract quantity adjustments less than Contract Limits, ensure that the change order is approved prior to performing the authorized work.

VIII. Controlling Board (ORC 127.16 and 5525.14)

- A. An EWCO with a pay item in excess of the Contract Limits, regardless of the funding source, and not covered by Section VIII.B of this procedure, must be submitted to the Controlling Board for approval prior to performance and payment of an EWCO.
 - 1. An EWCO shall NOT be divided into inappropriate pay items or participation codes for the purpose of avoiding Controlling Board review.
 - 2. Processing of Controlling Board Requests:
 - a. The District shall recommend the EWCO, obtain the Program Manager's signature, and obtain the Contractor's signature in accordance with Section X.B of this procedure.
 - b. The District shall forward to the Division of Construction Management the signed copy of the EWCO and a draft explanation appropriate for the Controlling Board request. This draft explanation shall be free of technical jargon and shall give a person unfamiliar with the project a basic understanding of the project and

the request.

- c. The Division of Construction Management will process the information submitted by the District and will officially request Controlling Board approval.
 - d. The Division of Construction Management will notify the District by telephone or e-mail of the Controlling Board's action by the next business day following the Controlling Board meeting. The District shall then approve the EWCO in accordance with Section X.B.4. **DO NOT APPROVE THE EWCO UNTIL IT HAS BEEN APPROVED BY THE CONTROLLING BOARD.**
 - e. The District will then inform the Contractor of the Controlling Board approval.
 - f. The Division of Construction Management will send to the District the executed Controlling Board approval of the EWCO. This approval shall be attached to the EWCO on file.
- B. An EWCO with a pay item in excess of Contract Limits, regardless of the funding source, must be reported to the Controlling Board quarterly in accordance with *ORC 5525.14(B)*, but does not have to be approved by the Controlling Board as follows:
- 1. An increase of a plan quantity that is determined during the final measurement of an item of work and which is coded as Final Measurements in CMS (TRNS.PORT SITEMANAGER™).
 - 2. Added work necessitated by federally mandated requirements that did not exist at the time of the original contract award.
 - 3. Added work for which the Director has granted emergency permission to proceed with work in accordance with Section XI.A of this procedure.

- C. The Division of Construction Management will prepare and submit a Report to the Controlling Board.

IX. Approval Authority

- A. All change orders for the extension of an existing contract item of work or for the addition of a new item of work beyond the Contract Limits shall be approved by the Director.

All change orders for additional work which consists of multiple related items (existing or new) the sum of which exceeds the lesser of \$100,000.00 or 25% of the original contract value shall also be approved by the Director.

- B. The District shall have authority to approve all change orders that do not require approval by the Director as set forth in Section IX.A of this procedure.

- C. For change orders requiring approval by the Director the procedures are as follows:

- 1. Change Orders based upon an emergency declaration.

- a. The District Construction Office shall obtain declaration of emergency as set forth in Section XI.A of this procedure.
- b. The District Construction Office shall then prepare the change order and execute as set forth in Section X of this procedure.

- 2. Change Orders based upon Final Measurement.

- a. The District Construction Office shall prepare and submit “REQUEST FOR ESTIMATED FINAL MEASUREMENT APPROVAL” or “REQUEST FOR ACTUAL FINAL MEASUREMENT APPROVAL” form to the Division of

Construction Management for approval by the Director.

- b. The Division of Construction Management will obtain the Director’s approval and signature, promptly notify the District Construction Office of the Director’s action by e-mail and return to them the fully executed document.
 3. Change Orders not based upon an emergency declaration and not Final Measurement.
 - a. The District Construction Office shall prepare and submit “REQUEST FOR PRELIMINARY CHANGE ORDER APPROVAL” form to the Division of Construction Management for approval by the Director.
 - b. The Division of Construction Management will obtain the Director’s approval and signature on “REQUEST FOR PRELIMINARY CHANGE ORDER APPROVAL” form, promptly notify the District Construction Office of the Director’s action by e-mail and return to them the fully executed document.
 - c. The District Construction Office shall then prepare the change order and execute as set forth in Section X of this procedure.
 4. The DCE shall have authority to recommend change orders requiring approval by the Director.
- D. For change orders approved by the District the procedures are as follows:
1. The District shall establish a change order approval process whereby two different signatures are required.
 2. The people selected to sign change orders shall be knowledgeable with this procedure 510-010(SP) and policy 27-010(P) and familiar with the

project involved and the circumstances of the proposed change. One signature on the change order shall be from a person within the Construction Department while the other signature shall be from a person not within the Construction Department.

3. A person will be granted authority to recommend the change order.
 4. A person who is a Professional Engineer registered with the Ohio State Board of Registration for Professional Engineers and Surveyors will be granted approval authority.
 5. Several people may be authorized for each of the two signature levels on a project.
- E. The District shall inform the Contractor, at the preconstruction conference, of the people with change order approval authority for the project.
- F. The Deputy Director of the Division of Construction Management has approval authority of change orders prepared in accordance with Section I.I of this procedure.

X. Execution and Distribution

- A. In all cases, the District Construction Offices shall coordinate and obtain all necessary approvals (e.g. FHWA, Director, Program Managers, Controlling Board, Local Participating Agency) prior to execution.
- B. Printed copies of change orders shall be signed, copies distributed, and filed as follows:
 1. A person with recommended authority signs and dates on the “Recommended by” line indicating their title as appropriate. This person shall enter this action into SM (TRNS.PORT SITEMANAGER™).

2. The District shall indicate any required Program Manager approval on the change order. If approval is required, the District must indicate the date concurrence was obtained and provide documentation verifying concurrence.
3. The Contractor signs and dates on the “By Contractor” line indicating their title as appropriate. At the discretion of the District, contractor signature can occur before or after signature by the person recommending the change order.
 - a. In the event a Contractor attempts to “reserve its rights” either on a separate document (e.g. cover letter) or on the face of the change order:
 - (1) The District shall not execute change orders which contain any sort of reservation of rights language included by the Contractor except as set forth in Section X.B.3.a.(2) below.
 - (2) Under limited circumstances there may be a few instances where it is not feasible for the Contractor and Department to reach full agreement on all the costs and/or time damages arising from a specific circumstance. However, these instances should be rare. In such cases, it is expected that the Contractor notify the Engineer of its specific need, and justification for such need, to reserve its rights to claim specific time or costs at a later date. The Engineer may, only with the approval of the Division of Construction Management, permit a Contractor to reserve its rights. In all cases when a reservation of rights is permitted the details of the reservation of rights shall be documented in the “Explanation of Necessity” section of the change order.
 - (3) Any additional time required to process the change order as a result of this decision will not be justification for interest.

4. For change orders approved by the Director:
 - a. The District Construction Office shall then submit the change order to the Division of Construction Management.
 - b. The Division of Construction Management will obtain the Director's signature and notify the District Construction Office of this action by e-mail and return to them the fully executed document.
 - c. A person assigned approval authority for District level change orders for the project shall enter this action into SM (TRNS.PORT SITEMANAGER™).
5. For change orders approved by the District:
 - a. A person with approval authority signs their own name as a Professional Engineer with the initials P.E. next to their signature on the "Approved by" line and enters the date. This person shall enter this action into SM (TRNS.PORT SITEMANAGER™).
 - b. Do not approve a RWCO that is for the increase in the quantity of an original bid item to the Contract Limits that is in companion with an EWCO for the further addition of quantities to that same original bid item until the Declaration of Emergency or other preliminary authorization for the EWCO has been granted by the Director.
6. RWCO's
 - a. District sends the original signed document of all RWCO's including attached documents to the Office of Accounting for filing with the original contract.

- b. A copy of the signed RWCO shall be kept in the District project file.
- c. Copies of the signed RWCO's shall be distributed to the Contractor and project engineer on all projects.
- d. Copies of all executed RWCO's including backup documentation shall be provided to the FHWA on federal oversight projects.

7. EWCO's

- a. District sends the original signed document of all EWCO's including attached documents to the Office of Accounting for filing with the original contract.
- b. A copy of the signed EWCO shall be kept in the District project file.
- c. Copies of the signed EWCO's shall be distributed to the Contractor and project engineer on all projects.
- d. Copies of all executed EWCO's including backup documentation shall be provided to the FHWA on federal oversight projects.
- e. Copies of signed EWCO's for additions due to Final Measurements and work added due to Federal mandates shall be sent to the Division of Construction Management upon request for inclusion on the quarterly report to the Controlling Board.

XI. Authority to proceed with work prior to processing a change order may be granted to the Contractor by the following people under the specified conditions and procedures:

- A. The Director may grant emergency permission under *ORC Section 5525.14*, to

proceed with added work that exceeds the Contract Limits, prior to processing a change order.

1. This permission shall be in writing and granted to add work that is necessary to eliminate emergency circumstances that would:
 - a. create a life, safety, or health threatening situation, or
 - b. unduly delay the completion of a project and increase its costs.
2. Added work in these circumstances may include the following:
 - a. construction needed to complete a project,
 - b. adjustments needed to meet changed conditions,
 - c. alterations in original plans,
 - d. unforeseen contingencies, and
 - e. payments necessitated by contract terminations or suspensions.
3. The declaration of emergency and permission to proceed with work shall be fully documented using only the “DECLARATION OF EMERGENCY AND PERMISSION TO PROCEED WITH WORK” form.
4. The District Construction Office shall complete the “DECLARATION OF EMERGENCY AND PERMISSION TO PROCEED WITH WORK” form including all supporting documentation, obtain signature of the DDD and submit to the Division of Construction Management for approval by the Director.
5. The Division of Construction Management will obtain the Director’s approval and signature on “DECLARATION OF EMERGENCY AND

PERMISSION TO PROCEED WITH WORK” form, promptly notify the District Construction Office of the Director’s action by e-mail and return to them the fully executed document.

6. The original signed “DECLARATION OF EMERGENCY AND PERMISSION TO PROCEED WITH WORK” form with supporting documentation shall be kept in the District project file.
7. Copies of the signed “DECLARATION OF EMERGENCY AND PERMISSION TO PROCEED WITH WORK” form shall be sent to:
 - a. the Contractor, as the Department’s written commitment to pay for the work. The Contractor may proceed with the proposed work, however, it is not legally required to perform the proposed work until the change order is approved,
 - b. the Project Engineer.
8. Attach a copy of the emergency permission to the subsequent EWCO.
9. The EWCO shall be designated “Emergency” in SM (TRNS.PORT SITEMANAGER™).
10. When the amount of an emergency change order exceeds the authorized amount, the Director may authorize the excess amount by an amended emergency declaration using only the “AMENDED EMERGENCY AND PERMISSION TO PROCEED WITH WORK” form. Copies of the “AMENDED EMERGENCY AND PERMISSION TO PROCEED WITH WORK” form shall be distributed in the same manner as the original Emergency Declaration.
11. When a District discovers that added work beyond the Contract Limits was performed without emergency permission and the added work did not qualify as final measurements, the Director may declare an emergency

provided the added work did qualify for emergency status. This action must be documented on the “DECLARATION OF EMERGENCY AND PERMISSION TO PROCEED WITH WORK” form.

- B. The DCE, under authority given to the Director by *ORC Section 5525.14*, may grant permission to proceed with new items of work if the total payment for each pay item is less than the Contract Limits and Director authorization, if required, has been obtained.
1. The written permission shall define the extent of the work and the agreed price for the work negotiated with the Contractor or the estimated cost of the force account.
 2. The District shall consult with the FHWA under the conditions stated in Section V of this procedure, prior to granting permission to proceed.
 3. The District shall consult with the Program Manager under the conditions stated in Section VI of this procedure, prior to granting permission to proceed.
 4. The permission shall be kept in the project file with a copy to the Contractor.

XII. Change orders for payment of claims

- A. When such payments exceed the Contract Limits a Controlling Board request and approval are required before payment is made.
- B. Payments for damages associated with claims do not qualify as an emergency.

XIII. Change orders on projects under litigation

- A. Change orders on projects under litigation shall be coordinated with the Office of

Chief Legal Counsel prior to submitting to the Contractor for signature. Monthly, the Office of Chief Legal Counsel will supply each District with a list of projects that have pending litigation. For each listed project, the District shall inform the Office of Chief Legal Counsel, Court of Claims Section, of the following:

1. Pending disputes on each listed project that could result in a change order.
2. Change orders currently in process on each listed project.
3. All change orders approved on each listed project.

XIV. Extension of Project Limits

A. The DDD may extend project limits on a project under contract for the purpose of adding work outside of the original project only to accomplish the following:

1. Complete the project as intended by the original plan or
2. Eliminate circumstances arising from the project that would create a life, safety, or health threatening situation.

B. The procedures are as follows:

1. The extension of project limits shall be fully documented on the “EXTENSION OF PROJECT LIMITS” form.
2. The original signed “EXTENSION OF PROJECT LIMITS” form with supporting documentation shall be kept in the District project file.
3. A copy of the signed “EXTENSION OF PROJECT LIMITS” form shall be sent to the Project Engineer.

XV. Monitoring of Compliance

- A. The Division of Construction Management will conduct routine Quality Assurance Reviews (QAR) to ensure District compliance with this policy and procedure.
- B. Districts found in non-compliance may have their change order approval authority revoked until conformity is assured.

TRAINING:

The Division of Construction Management will provide management level training and consultation on the processing of time extensions and waivers of liquidated damages. District management shall provide training to their personnel assigned to the administration of time extensions and/or waiver of liquidated damages requests.

Reviews will be conducted by the Division of Construction Management as necessary to ensure compliance with this procedure.

FISCAL ANALYSIS:

This procedure will contain costs of the Department's construction program.

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Appendix List of Forms

Request for Preliminary Change Order Approval and Permission to Proceed with Work

Declaration of Emergency and Permission to Proceed with Work

Request for Estimated Final Measurement Approval

Request for Actual Final Measurement Approval

Amended Request for Preliminary Change Order Approval and Permission to Proceed with Work

Amended Declaration of Emergency and Permission to Proceed with Work

Extension of Project Limits

Forms are published on the Division of Construction Management website at the following internet address:

<http://portal.dot.state.oh.us/Divisions/Construction/Change%20Orders/Forms/AllItems.aspx>