



Construction Contract Notice Letters

Richard J. Long, P.E.

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Construction Contract Notice Letters

BACKGROUND

Most construction contracts require written notice for changes, differing site conditions, extra work, or other events which may affect the contractor's time and cost of performance. The process of giving "notice" is vital to triggering the contract mechanisms that allow the contractor to pursue additional time and cost and to reserve its rights to recover for any unforeseen but related impacts that may later arise.

As discussed in a recent Long International article, *The Importance and Value of "Notice" Provisions in Construction Contracts*,¹ failure to provide proper and timely notice may limit the contractor's ability to recover its increased costs of performance. Some of the key factors required by standard contract form notice provisions are as follows:

1. Notice must be in writing;
2. Written notice must be served to a specific designated party;
3. Notice must be given as soon as the notifying party becomes aware of the circumstances of an impact event or condition;
4. Notice must be given within a defined time period;
5. Notice for time and additional cost impacts must be given if both are deemed involved;
6. Details of the actual or anticipated effects of any impacts, if practicable;
7. Estimates of the extent of any time and cost impact;
8. Supporting documentation must be submitted within a specified time frame (possible second notice period);
9. Specific schedule and work activities affected; and
10. Cause, effect, and length.

All of the contractually required information associated with a notice, as listed above, may not be immediately available when the event triggering a requirement for a notice occurs. A timely notice should still be provided regarding the event or problem with an indication that more detailed information will be provided at a later date.

To facilitate their preparation, sample notice letters are provided for the following events:

- Constructive change for additional work
- Nonpayment
- Directed acceleration
- Access delay

¹ See Articles on Long International's website, www.long-intl.com.



Construction Contract Notice Letters

- Late or defective owner-furnished equipment or materials
- Differing site conditions
- Change directive
- Claim for extras in advance of work being performed
- Claim for extras after work was performed
- Request for extension of time and additional compensation
- Multiple problems
- Noncompliance notice to subcontractor
- Change order proposal transmittal letter
- Change order execution transmittal letter
- Request for time extension due to severe weather
- Request for CPM data if owner or construction manager is maintaining the schedule

Should you have any questions regarding the issue of notice or the sample letters below, please contact Richard J. Long at (303) 972-2443.

About the Author



Richard J. Long, P.E., is Founder and CEO of Long International, Inc. Mr. Long has over 40 years of U.S. and international engineering, construction, and management consulting experience involving construction contract disputes analysis and resolution, arbitration and litigation support and expert testimony, project management, engineering and construction management, cost and schedule control, and process engineering. As an internationally recognized expert in the analysis and resolution of complex construction disputes for over 30 years, Mr. Long has served as the lead expert on over 300 projects having claims ranging in size from US \$100,000 to over US \$2 billion. He has presented and published numerous articles on the subjects of claims analysis, entitlement issues, CPM schedule and damages analyses, and claims prevention. Mr. Long earned a B.S. in Chemical Engineering from the University of Pittsburgh in 1970 and an M.S. in Chemical and Petroleum Refining Engineering from the Colorado School of Mines in 1974. Mr. Long is based in Littleton, Colorado and can be contacted at rlong@long-intl.com and (303) 972-2443.

NOTICE OF CONSTRUCTIVE CHANGE FOR ADDITIONAL WORK

Date

Addressee

Re: [Describe Problem]

Dear [Name of Designated Representative]

By field (or oral) directive [number], we were directed to perform additional work. This work is not described in, or a part of, the original plans and specifications, nor is it in any way called for by the contract documents.

To help in your planning, we submit this notice as required by our contract. The directive to perform the work constitutes a constructive change to our contract, and we will request additional compensation and additional time for performance.

We cannot tell you how much added time and construction cost to expect at this time. When we have sufficient information, we will submit a change order request for additional compensation relating to the additional direct costs and potential inefficiency, disruption, rescheduling, acceleration, overtime, overmanning, stacking of trades, dilution of supervision, cumulative impact of multiple changes, and any other impact costs as well as extended overhead and equipment costs for this increased work. We have established a separate cost code for this work. As soon as the costs can be isolated, calculated, and the additional time necessary to perform this work quantified, we will submit a time extension request.

We assure you that we will do everything we can to minimize those costs and the necessary contract time extension.

Your cooperation in minimizing this impact will be appreciated.

Sincerely,

[Name of Project Manager]

[Name of Company]

NOTE: This is a sample letter only. The contract must be reviewed thoroughly for specific notice requirements and language. Before proceeding with a field directive, the contract must be carefully evaluated to determine duties to proceed or not proceed, the authority required to authorize changed work, and the documents that must be supplied for such extra work.

NOTICE OF NON-PAYMENT

Date

Addressee

Re: [Notice of Non-Payment]

Dear [Name of Designated Representative]

This is to notify you that, as of the date of this letter, we have not received \$ [dollar amount] representing payment due for previous progress payment(s) [insert progress payment and invoice number] approved by [insert appropriate name]. This failure to make payment constitutes a material breach of our contract. If within seven days from this letter, we do not receive payment of the sums due and owing to us, we will exercise our rights under the contract, which may include termination for material breach.

Nothing contained herein shall constitute a waiver of our claims for interest on past-due amounts or for interest on past-due amount or for other damages that may result from this breach or the exercise of our right to terminate the contract.

Sincerely,

[Name of Project Manager]

[Name of Company]

NOTE: This is a sample letter only. The contract must be reviewed thoroughly for specific notice requirements and language.

NOTICE OF DIRECTED ACCELERATION

Date

Addressee

Re: [Notice of Directed Acceleration]

Dear [Name of Designated Representative]

On [date], you directed that we add men, work extra shifts, and work overtime [whatever applies] to achieve completion of milestone(s) [number or activity numbers] on or before [date]. This is [number of days, weeks, months] prior to the scheduled completion of this milestone [or activity], adjusted for excusable delays for which we are entitled a time extension. This directive constitutes a directed acceleration of our work because

We will attempt to comply with this directive by increasing the manpower and equipment as necessary. However, we request additional compensation for all direct and indirect costs of this acceleration effort including, but not limited to, any resulting inefficiencies from disruption, rescheduling, overmanning, stacking of trades, overtime, dilution of supervision, and any other impacts. We assure you that we will do everything we can to minimize those costs.

As soon as we are able to quantify the costs of the accelerated effort, we will prepare a change order request.

Your cooperation in minimizing this impact will be appreciated.

Sincerely,

[Name of Project Manager]

[Name of Company]

NOTE: This is a sample letter only. The contract must be reviewed thoroughly for specific notice requirements and language.

NOTICE OF ACCESS DELAY

Date

Addressee

Re: [Notice of Access Delay]

Dear [Name of Designated Representative]

On [date], our access to [specific equipment/area] was impeded because of [cite impediments]. As you know, we have been keeping you up to date on this unexpected problem. The scheduled work that cannot be performed falls along the critical path of our work, and our inability to perform work as scheduled and sequenced will necessarily affect completion of the project. We understand that access will be impaired for the next [number] days and possibly longer.

To help in your planning, we provide to you this further update. Although we are certain that you are working diligently to solve this access problem, we thought that you would appreciate knowing that the project schedule, as well as our construction cost, will necessarily be affected by this problem. We cannot tell you how much added time and construction cost to expect until the problem is solved, but we request an extension of time for each day that our access to this critical area/equipment is denied. When we have sufficient information and know the overall extend of the delay, we will submit a request for time extension and additional compensation relating to the potential inefficiency, disruption, rescheduling, acceleration, overtime, overmanning, stacking of trades, dilution of supervision, and any other impact costs as well as extended overhead and equipment costs for this delay.

We assure you that we will do everything we can to minimize those costs and the necessary contract time extension. If we can be of any help in expediting the resolution of the problem, and getting us all back on track, please let us know.

Your cooperation in minimizing this impact will be appreciated.

Sincerely,

[Name of Project Manager]

[Name of Company]

NOTE: This is a sample letter only. The contract must be reviewed thoroughly for specific notice requirements and language.

NOTICE OF LATE OR DEFECTIVE OWNER-FURNISHED EQUIPMENT OR MATERIALS

Date

Addressee

Re: [Late Deliveries]

Dear [Name of Designated Representative]

We are continuing to experience serious problems with the delivery of owner-furnished equipment [or materials]. [Identify equipment or material items] were received at least [insert days or weeks] later than the date set out in the equipment [or material] delivery schedule. In some cases, equipment, or their essential components [or material] were received as late as [insert weeks or months] after the specified delivery date. Further, because of misfabrications or other manufacturing problems, installation of this owner-furnished equipment [or material] has been much more difficult and, in some cases, impossible without substantial field modifications [use this sentence if applicable].

The above factors have resulted in additional costs for our field and engineering personnel and have delayed completion of the work. We may incur increased costs due to delay, disruption, rescheduling, acceleration, overtime, overmanning, stacking of trades, dilution of supervision, and other impacts. As soon as we are able to determine the extent of the delay and the costs of addressing these ongoing problems, we will request a change order for additional compensation and an appropriate time extension.

We assure you that we will do everything we can to minimize those costs and the necessary contract time extension. If we can be of any help in expediting the resolution of the problem, and getting us all back on track, please let us know.

Your cooperation in minimizing this impact will be appreciated.

Sincerely,

[Name of Project Manager]

[Name of Company]

NOTE: This is a sample letter only. The contract must be reviewed thoroughly for specific notice requirements and language.

NOTICE OF DIFFERING SITE CONDITIONS

Date

Addressee

Re: [Differing Site Conditions]

Dear [Name of Designated Representative]

On [date], while excavating for [insert item], we encountered [describe condition(s) encountered]. The existence of the [material] was not indicated in the contract documents or the accompanying soils report, is not contemplated by the design of the [insert item], and of course, was not considered in our bid.

In order to remove the [insert description], it will be necessary to suspend the work for a period of time during which additional equipment will be required for removal of the [insert description].

We will not further disturb this condition. [If the contract has a DSC clause, add the next sentence] Pursuant to article [number] of our contract, we formally notify you of the existence of a differing site condition. We request that you examine the condition and instruct us how to proceed. We request direction on whether the encountered material should be removed or whether the design can be modified to allow the materials to remain in place [or alternatively whether you would like us to redesign the _____ to accommodate the changed conditions].

When we have sufficient information to assess the entire impact of this condition on our performance, we will submit a request for additional compensation relating to the increased direct costs and potential inefficiency, disruption, rescheduling, acceleration, overtime, overmanning, stacking of trades, dilution of supervision, cumulative impact, and any other impact costs as well as extended overhead and equipment costs for this problem and related delay.

We assure you that we will do everything we can to minimize those costs and the necessary contract time extension. If we can be of any help in expediting the resolution of the problem, please let us know.

Your cooperation in minimizing this impact will be appreciated.

Sincerely,

[Name of Project Manager]
[Name of Company]

NOTE: This is a sample letter only. The contract must be reviewed thoroughly for specific notice requirements and language.

NOTICE OF CHANGE DIRECTIVE

Date

Addressee

Re: [Description of Change Directive]

Dear [Name of Designated Representative]

We were given instructions by [name] on [date] to [describe work added or changed].

This change directive is for work not within the scope of our present contract and we, therefore, request a written modification to cover the added [material, labor, equipment, and so forth] required to perform the work as ordered. [Give notice of other factors involved such as delay, disruption, acceleration, overtime, overmanning, trade stacking, cumulative impact of multiple changes, diversion of men or equipment from contract work, material shortages, and so forth.]

Our proposal for the added cost resulting from this change directive is being prepared and will be submitted for your approval as soon as possible. We cannot determine at this time the effect on the contract completion date, or other work under the contract. We assure you that we will do everything we can to minimize those costs and the necessary contract time extension, and will advise when a full analysis has been made.

As ordered, we [are proceeding/have proceeded] at once to [procure materials/perform the work] so that we can complete this change order at the earliest possible time. In the event you do not approve of such action, please advise immediately so that we may stop this effort and minimize the cost involved.

Your signature at the bottom of this letter will satisfactorily confirm the oral instructions.

Sincerely,

[Name of Project Manager]

[Name of Company]

Confirmation: The above-stated report of our instruction is confirmed.

COMPANY [Name of Company]

BY [Name of Individual Confirming]

TITLE [Title of Individual Confirming]

FILE NO. [Number]

NOTE: This is a sample letter only. The contract must be reviewed thoroughly for specific notice requirements and language. Before proceeding with a directed change, the contract must be carefully evaluated to determine our duties to proceed or not proceed, the authority required to authorize changed work, and the documents that must be supplied for such extra work.

CLAIM FOR EXTRAS IN ADVANCE OF WORK BEING PERFORMED

Date

Addressee

Re: [Description of Extra Work Not Yet Performed]

Dear [Name of Designated Representative]

This letter is to notify you that on [date], we will begin the above-referenced extra work as requested by [insert name] on [insert date].

Because this work was not required under our original contract scope, we request additional compensation for our effort. When we have sufficient information, we will submit a request for additional compensation relating to the increase in direct costs as well as costs for potential inefficiency, disruption, rescheduling, acceleration, overtime, overmanning, stacking of trades, dilution of supervision, cumulative impact of multiple changes, and any other impact costs as well as extended overhead and equipment costs to perform this increased scope of work.

We thought that you would appreciate knowing that the project schedule will also be affected by this problem. Accordingly, a time extension to our contract completion date may also be required because of this extra work. We cannot tell you how much added time will be required at this time, but we assure you that we will do everything we can to minimize the cost and the necessary contract time extension required.

If you do not want us to perform this work as an extra to the contract, please notify us immediately before we incur further costs in preparation for performance of this work. If we do not hear from you right away, we will assume that you agree with our plan to perform this work and intend to provide additional compensation and time extension.

Sincerely yours,

[Name of Project Manager]

[Name of Company]

NOTE: This is a sample letter only. The contract must be reviewed thoroughly for specific notice requirements and language.

CLAIM FOR EXTRAS AFTER WORK WAS PERFORMED

Date

Addressee

Re: [Description of Extra Work Already Performed]

Dear [Name of Designated Representative]

This work was performed pursuant to your representative's directives [insert name] on [date].

Because this work was not required under our original contract scope, we request additional compensation and a time extension for our effort. Our request for additional compensation will include additional direct costs as well as any increased costs for delay, extended overhead and equipment, disruption, rescheduling, acceleration, overtime, overmanning, stacking of trades, loss of efficiency, dilution of supervision, cumulative impact of multiple changes, and/or other impacts.

We proceeded to complete this work so as to minimize the cost of the work and any delay to our work and the project that would have resulted had we not complied with your representative's directives. We will be pleased to review this matter with you at your convenience and will provide you with a detailed cost breakdown for this extra work as soon as we have it computed.

Sincerely yours,

[Name of Project Manager]
[Name of Company]

NOTE: This is a sample letter only. The contract must be reviewed thoroughly for specific notice requirements and language.

REQUEST FOR EXTENSION OF TIME AND ADDITIONAL COMPENSATION

[To be sent immediately after delay is encountered]

Date

Addressee

Re: [Describe Problem]

Dear [Name of Designated Representative]

We are continuing to pursue the completion of our work as rapidly as is reasonably possible under the current circumstances. We have, however, recently encountered certain delays to our performance through no fault of our own and that are beyond our control. As you know, the contract we both have signed requires that we furnish to you written notice of such delays: [check to see if contract requires notice – most contracts do.] We have continued to keep your field representatives informed of these delays and of their effect on overall job completion. You may be assured that we will seek diligently to minimize as best we can the effects of these delays on our work.

Specifically, we have been delayed in the following areas and ways:

[Description of delays, list specific activities on the schedule]

Accordingly, we hereby request an extension of at least [number] days to our contract completion date to take into consideration the above delays. Once the full impact of these delays is realized, we will forward to you another letter updating and finalizing our time extension request.

These delays have also had a serious effect on the cost of performance. They have required additional time for the performance of our work along with additional costs for supervision, overtime, disruption, overhead, equipment rentals, and productivity losses for our field labor. Accordingly, this letter is to inform you that we will request additional compensation for all costs resulting from these delays, disruptions, and interferences which have been imposed on us through no fault of our own. When we have sufficient information, we will submit a request for additional compensation relating to the costs for this delay.

If we can be of any help in expediting the resolution of these problems, please let us know.

Your cooperation in minimizing this impact will be appreciated.

Sincerely yours,

[Name of Project Manager]

[Name of Company]

NOTE: This is a sample letter only. The contract must be reviewed thoroughly for specific notice requirements and language.

NOTICE FOR MULTIPLE PROBLEMS

Date

Addressee

Re: [Notice of Problem(s) or Description(s)]

Dear [Name Designated Representative]

Once again, we have been required to perform additional and changed work for which we request a change order, additional compensation, and a time extension to our contract completion date.

As you know, we have had an ongoing problem with your changing and adding to the scope of our work and its costs. Although the contract promised us [*for example*, free access to the site], we incurred added costs, and then were required to accelerate our work when you denied us [*for example*, proper access and time extensions]. You later changed [*for example*, the submittal review and change order processes set out in the contract] and those changes have caused us to incur added costs. We anticipate that our work will be delayed and that our productivity will be negatively impacted by the cumulative impact of multiple changes, but at this time, we have not been able to quantify the delay or compute the impact costs.

We know you can appreciate that these changes are costly and affect our efficiency. Please be assured, however, that we will continue to work with you in order to minimize the added cost and time for which we will request additional compensation and a time extension to our contract completion date.

Sincerely,

[Name of Project Manager]

[Name of Company]

NOTE: This is a sample letter only. The contract must be reviewed thoroughly for specific notice requirements and language.

NON-COMPLIANCE NOTICE TO ANOTHER CONTRACTOR OR SUBCONTRACTOR

Date: _____
Time: _____ am _____ pm
Inspector: _____

Date _____
To _____
Project Name _____
Contractor or Subcontractor

Affected Contract No. _____

You are hereby notified that tests inspections indicates that the

does not conform to the specifications requirements. The specification violated is

Section _____ Article / Paragraph _____. Under the provisions of the contract specifications, the requirements are _____

Non-complying work may be required to be removed and replaced at your cost.

It shall be your responsibility to determine the corrective action necessary, and to determine whether you wish to discontinue operations until additional investigations confirm or refute the initial findings.

Your response is required by: _____

Sincerely,

[Name of Project Manager]
[Name of Company]

NOTE: This is a sample letter only. The contract must be reviewed thoroughly for specific notice requirements and language.

CHANGE ORDER PROPOSAL TRANSMITTAL LETTER
WITHOUT IMPACT COSTS

Date _____

Addressee _____

Re: Job No. _____
Job Name _____
Proposed Change No. _____

Dear [Name of Designated Representative]

We enclose a breakdown of costs for the changes requested by _____
on _____, designated as Change No. _____

We were furnished the following drawings and specifications: [Number and date]

We propose to perform the following work: [List]

We do not include any of the following: [List exclusions specifically]

The total net change to our contract is as follows:

Total adds per breakdown: _____

Total deducts per breakdown: _____

Net Change: _____

This change proposal covers only the direct costs associated with the change order work described above. This change proposal does not include any amounts for costs related to changes in the sequence of work, delays, disruptions, rescheduling, extended overhead, acceleration, loss of productivity, cumulative impact of multiple changes, and/or other impact costs. We expressly reserve the right to request payment for any and all of the aforementioned costs associated with this change order at a later date and to submit these costs as they become known.

It is anticipated that all work required by this change will be done on a straight time basis. Overtime work, if required, will be requested as an additional item.

This proposal is for acceptance within _____ days and is subject to change and/or escalation thereafter.

An extension of time of _____ calendar days to our contract completion date is required.
— OR —

The impact of this change on the additional time required for performance of the contract cannot be determined at this time. At such time when we are able to accurately assess the number of additional days of time related to this change, we will notify you accordingly.

We are proceeding with the changes listed above per your instructions.

— OR —

Please advise as soon as possible if we are to proceed.

Yours very truly,

[Project Manager's Name]

[Company Name]

NOTE: This is a sample letter only. The contract must be reviewed thoroughly for specific notice requirements and language.

CHANGE ORDER EXECUTION TRANSMITTAL LETTER

Date

Addressee

Re: [Project]
[Change Order No. _____]
[Contract No. xxxx]

Dear [Name of Designated Representative]

Enclosed please find Change Order No. _____ to the above referenced contract.

This change order compensates [Name of Contractor] solely for its direct costs incurred in performing changed work. This change order does not include any amounts for costs related to changes in the sequence of work, delays, disruptions, overmanning, stacking of trades, dilution of supervision, rescheduling, extended overhead and equipment, overtime, acceleration, cumulative impact, and/or other impact costs. We assure you that we will do everything we can to minimize those costs and any required contract time extension. However, [Name of Contractor] expressly reserves its right to seek a time extension and request any and all of the above costs not compensated herein prior to final settlement of this contract.

Accordingly, we are executing this change order under the express condition that our rights are reserved to request a time extension and additional compensation for all costs indicated herein as well as all costs associated with the cumulative impact of all the change orders issued on this project, prior to final settlement of this contract.

Very truly yours,

[Name of Project Manager]
[Company Name]

NOTE: This is a sample letter only. The contract must be reviewed thoroughly for specific notice requirements and language.

REQUEST FOR TIME EXTENSION DUE TO SEVERE WEATHER

Date

Addressee

Re: [Request for a Time Extension]
[Contract No. xxxx]

Dear [Name of Designated Representative]

In accordance with [cite contract reference] which forms the General Conditions of the above referenced contract, we advise you that we have encountered unforeseeable, unusually severe weather which has delayed our performance of the work. This delay is beyond our control, and without fault or negligence on our part.

The delay has lasted for a period of ____ calendar days, from _____ through _____.

The enclosed charts of weather conditions, provided for us by the _____ Weather Bureau, indicate that the [rainfall, snow, winds] experienced was excessive and of an extremely unusual nature.

We therefore, by this letter, request a time extension of ____ calendar days under the terms and provisions of the above referenced contract.

Sincerely,

[Name of Project Manager]
[Name of Company]

NOTE: This is a sample letter only. The contract must be reviewed thoroughly for specific notice requirements and language.

LETTER REQUESTING CPM DATA IF OWNER OR CONSTRUCTION MANAGER IS MAINTAINING THE SCHEDULE

Date

Addressee

Re: [Scheduling Data]

Dear [Name of Designated Representative]

I would appreciate you providing me with the following scheduling data so that we can together determine the delays to the project and the exact schedule to complete the project based on the new extended time of performance:

- As-Planned and Approved CPM Logic Diagram for all activities on the project;
- An approved As-Planned Schedule Activity report listing all the activities in ascending order including activity numbers, descriptions, progress status, area code, early and late start, early and late finish and total float;
- Predecessor/successor logic report in ascending and numeric order showing all activities in the approved As-Planned Schedule;
- Approved As-Planned Schedule report sorted by total float;
- List of all time extensions to the project and where they are referenced in the CPM Update for which they were incorporated;
- All CPM updates (including activity, total float, predecessor/successor reports for each update); and
- A copy of all scheduling computer disk files that comprise the approved as-planned CPM schedule and all stasured schedule updates to date.

Once we have both had the opportunity to review this information, I believe we can reasonably discuss the delays to the project that have incurred and the impacts related thereto. We would also be in a better position to discuss how we can work together to complete this project.

(continued)

LETTER REQUESTING CPM DATA IF OWNER OR CONSTRUCTION MANAGER IS MAINTAINING THE SCHEDULE

(continued)

For the scheduling data to be complete, it must include the following:

[Insert as applicable]

- Delays and impacts associated with the over [insert number] change orders issued on the project.
- Delays and impacts associated with the late delivery of information by [insert name of other party supplying information].
- Delays and impacts associated with the defective [identify scope as required] performed by [insert name of other party].
- Delays and impacts associated with delayed arrival of [insert identification of equipment and materials supplied by others].
- Delays and impacts associated with the delayed start of [identify scope as required] because of [insert cause].
- Delays and impacts associated with the changes to [identify scope as required].
- Delays and impacts associated with the [overzealous inspections by _____].
- Delays and impacts associated with delayed RFI responses and submittal approvals.
- Delays and impacts caused by [insert description as required].
- All time extensions granted to date and any pending time extensions.

When you review the scheduling data, you must evaluate the impact on our work as a result of our firm being forced to perform work out of sequence, changes to our contract, pending changes to our contract, and the fact that other contractors have interfered with and delayed our ability to perform our work.

Thank you for your cooperation in this important matter.

Sincerely,

[Name of Project Manager]
[Name of Company]

NOTE: This is a sample letter only. The contract must be reviewed thoroughly for specific notice requirements and language.