

APPENDIX 11

DIRECT COSTS

In connection with any Compensation Event, “**Direct Costs**” means the sum of (a) the Base Direct Costs and (b) the Mark-up permitted in respect of certain Base Direct Costs.

1.1 “**Base Direct Cost**” means the cumulative total, without duplication, of only the following amounts, as paid or incurred by Developer or Contractors, as applicable, to the extent that they specifically relate to, and are solely attributable to, a Compensation Event:

- (a) Direct Labor. The actual net, direct increase or decrease in the cost of Developer’s and/or Contractors’ labor. Such cost shall include only the cost associated with the workers who actually perform the Extra Work at the Work Site or at fabrication sites off the Work Site. The cost of supervision, management and field or office overhead shall not be included or calculated as a direct labor cost. For shop work, the direct labor cost shall include only those workers who work directly on the item being manufactured or the actual operators of the equipment being used to handle the items being manufactured;
- (b) Labor Burden. Developer and/or Contractors’ actual costs for worker’s compensation and liability insurance, payroll taxes, social security and employees’ fringe benefits (including employer paid health insurance) imposed on the basis of payrolls for the performance of the Extra Work at the Work Site, or at fabrication sites off the Work Site. The burden shall be itemized and include all small tools and miscellaneous supplies. The total labor burden for such small tools shall not exceed two percent (2%) of the Direct Labor cost under Section 1.1(a) of this Appendix 11;
- (c) Direct Material, Supplies, Installed Equipment. The actual net, direct cost of materials, supplies and equipment incorporated into or consumed by the Extra Work. If actual costs are not available, this cost shall be the lowest commercially available price including all discounts and rebates and all applicable taxes. Such cost shall be based on buying the material, supplies and equipment in the largest practical quantity to receive quantity discounts;
- (d) Equipment Costs. Without mark-up or operator, the lesser of: (i) the actual net cost to Developer and/or Contractors of owned or rented equipment, other than small tools; or (ii) the rental rate for such equipment as determined by using the following method(s):
 - (A) Equipment rental rates listed in the appropriate rental rate book then currently in use by the Colorado Department of Transportation. If an item of equipment does not appear in the rental rate book then currently in use by the Colorado Department of Transportation, the

rental rates published by the Associated Equipment Dealers may be used as a basis for negotiating a rental rate for a particular piece of equipment. Developer shall provide all information necessary to determine the appropriate rental rate at the time the equipment is brought on the job, including type, description, make, year, model, series, serial number, fuel type, transmission, wheel combination, GVW, capacity and equipment owner;

- (B) Rental equipment costs shall be determined using actual invoiced rates, less all discounts for basic equipment rental; and
- (C) Mobilization/demobilization costs to the extent that the equipment is mobilized exclusively for the Extra Work. If the equipment is also used for the Work absent the Compensation Event, no mobilization or demobilization cost will be paid. Mobilization/demobilization costs will be based on using the least expensive means to mobilize or demobilize. Equipment shall be obtained from the nearest available source. When the least expensive methods are used, the costs shown in the actual invoice will be the basis for pricing;
- (e) Professional Design Services. The actual cost of professional design/engineering services necessary to perform the Extra Work;
- (f) Bonds, Insurance, Permits And Taxes. The actual increases or decreases in the cost of premiums for bonds and insurance, permit fees, and sales, use or similar taxes related to the Extra Work;
- (g) Delay Costs. (i) The direct cost of actual idle labor and equipment incurred by Developer or its Contractors, as applicable, during any applicable Compensation Event Delay or as a result of a non-critical path delay directly attributable to a Compensation Event (collectively, the “**Delay Costs**”);
- (h) Quality Assurance. The actual cost of third party quality assurance services necessary to perform the Extra Work;
- (i) Travel and Subsistence. Reasonable travel and subsistence expenses of employees of Developer and/or Contractors incurred as a result of the performance of Extra Work, to the extent such Extra Work relates to Renovation work during the Project Operating Period;
- (j) Competitive Tender. The cost of competitively tendering any contract in relation to the Extra Work, to the extent such competitive tendering is required pursuant to the Agreement; and
- (k) Net O&M Costs. Without duplication of amounts described in clauses (a) through (j) of this Section 1.1, the net increase or decrease in costs of performing the O&M Services, provided that with respect to any such net increase or decrease in costs due to a Compensation Event Delay that

delays Developer's receipt of Supplemental Payments and/or Concessions Revenue during the Project Construction Period, the provisions of Section 11.4 of the Agreement shall apply.

- 1.2 The total mark-up for overhead and profit as a percentage of the Base Direct Costs (the "**Mark-up**") described in Section 1.1 of this Appendix 11 shall not exceed the limits set forth below:
- (a) Twelve percent (12%) of the cost of that portion of the Extra Work to be performed by Developer with its own forces.
 - (b) Twelve percent (12%) of the cost of that portion of the Extra Work to be performed by the first tier Contractor with its own forces or any Contractor of second tier or lower with its own forces, plus three percent (3%) for Developer. Total combined Developer's and Contractors' Mark-up of Developer and Contractors shall not exceed fifteen percent (15%).

All of Developer's and Contractors' field and office overhead and supervision costs are included in the Mark-up.

No Mark-up is permitted for the Excluded Base Direct Costs.

In support of any claim by Developer for Direct Costs under the Agreement, Developer shall specify the applicable Mark-up (in the aggregate and per tier) in relation to each category of Base Direct Costs.