**SAMPLE NOTICE LETTERS INCLUDED IN THE CNA SURETY**

**“CONSTRUCTION CONCERNS ARISING FROM COVID-19” COMMUNICATION**

|  |
| --- |
| CNA Surety has been asked to provide the included Sample Notice Letters to you in Word format for your reference and convenience. Please keep in mind:* Each contract likely has specific notice requirements;
* Each project may have its own unique situation;
* Different scopes of work may have different impacts; and
* Governmental directives and orders may vary at the local, state and national levels.

**These sample letters are for illustration purposes. They are not legal advice. They also are not one-size-fits-all. Any notices you send should document your specific impacts and circumstances on your particular project(s) and contract(s).** ***Consult with your attorney to develop appropriate notices for your needs.*** |

**SAMPLE NOTICE A - POTENTIAL DELAYS AND COSTS DUE TO COVID-19**

***This sample letter is for illustration. It is not legal advice.***

***Consult with your attorney. Any notices must comply with your specific Contract terms.***

[ON YOUR LETTERHEAD]

[DATE]

[OWNER/ PROJECT REPRESENTATIVE NAME, ADDRESS AND EMAIL ADDRESS]

**Re: [PROJECT NAME/ DESCRIPTION]**

 **Notice of Potential Delays and Cost Impacts Due to COVID-19 Pandemic**

Dear [Name of Designated Representative]:

As you know, the President has declared a national emergency and the Governor has declared a state emergency due to the COVID-19 pandemic (the “Pandemic”). This letter gives notice of potential delays, additional costs and other impacts to the Project as a result of the Pandemic.

We remain committed to the Project and do not intend to be adversarial. However our [contract/subcontract] requires us to notify you of any impacts that may lead to extra costs or the need for additional time. Further, we must work in a safe and reasonable manner and in compliance with governmental direction.

We anticipate that the Pandemic will delay our work and negatively impact productivity, including potential impacts to labor, personnel, manufacturing, equipment, materials and transportation. These impacts are likely to adversely affect the critical path of the Project schedule and/or result in increased work and costs. Specifically, the potential delays, costs and impacts may include:

* State or local orders which stop or suspend construction activities. *Describe work stoppages or limited access to work site*.
* Schedule disruption: *Describe delays/ impacts/ inefficiencies/ out of sequence work, whether critical path or not.*
* Supply disruption/ cost escalations: *Describe delays in material, supplies or equipment, price increases/ rental increases/ reprocurement costs.*
* Labor disruption: *Describe labor shortages and/or illness among labor force*.
* Additional Work and costs to prepare the site, suspend work, and resume work: *Describe additional work and costs.*

This Pandemic is a continuing situation. Therefore, the full extent of these Pandemic delays and costs are not yet known and the impacts cannot yet be completely identified or quantified. These delays and costs are beyond our control and through no fault of our own. We will keep you informed as additional information becomes available.

We look forward to working with you to address the impacts of the Pandemic at the proper time and to move the Project toward successful completion. We reserve all rights and remedies afforded by the contract, governmental direction, by applicable law and in equity, including the right to seek an extension of time and an increase in our Contract Price.

Wishing you the best during this time,

[SIGNATURE]

**SAMPLE NOTICE B – ACCESS DELAYS DUE TO COVID-19**

**FOLLOWING STATE OR LOCAL ORDER**

***This sample letter is for illustration. It is not legal advice.***

***Consult with your attorney. Any notices must comply with your specific Contract terms.***

[ON YOUR LETTERHEAD]

[DATE]

[OWNER/ PROJECT REPRESENTATIVE NAME, ADDRESS AND EMAIL ADDRESS]

**Re: [PROJECT NAME/ DESCRIPTION]**

 **Notice of Access Delays and Cost Impacts Due to COVID-19 Pandemic**

 **Following Governmental Order**

Dear [Name of Designated Representative]:

On \_\_\_\_ [DATE]\_\_\_\_\_\_\_\_\_\_, our access to [project site/area/specific equipment] was impeded because of the ongoing COVID-19 pandemic (the “Pandemic”) and the state and/or local order to stop or suspend construction activities. The effects of the Pandemic are unprecedented. The scheduled work that cannot be performed falls along the critical path, and our inability to perform the work as scheduled will necessarily negatively impact completion of the Project. We understand that access will be impaired for the next [number] days and possibly longer.

The Project schedule and our construction cost will necessarily be affected by the Pandemic. We cannot tell you how much added time and increased construction cost to expect until the situation is resolved. However, initially, we request an extension of time for each day that our access to this [project site/area/specific equipment] is impeded. Once we have sufficient information to know the overall extent of the delay, we will submit a request for a time extension and additional compensation relating to the potential inefficiency, disruption, rescheduling, acceleration, overtime, stacking of trades, dilution of supervision, material/ supply disruptions and any other impact costs as well as extended overhead and equipment costs for this delay.

We look forward to working with you to address the impacts of the Pandemic at the proper time and to move the Project toward successful completion. We reserve all rights and remedies afforded by the contract, governmental direction, by applicable law and in equity.

Wishing you the best during this time,

[SIGNATURE]

**SAMPLE NOTICE C – ACTUAL DELAYS AND COSTS DUE TO COVID-19**

***This sample letter is for illustration. It is not legal advice.***

***Consult with your attorney. Any notices must comply with your specific Contract terms.***

[ON YOUR LETTERHEAD]

[DATE]

[OWNER/ PROJECT REPRESENTATIVE NAME, ADDRESS AND EMAIL ADDRESS]

**Re: [PROJECT NAME/ DESCRIPTION]**

**Notice of Delays and Cost Impacts Due to COVID-19 Pandemic**

Dear [Name of Designated Representative]:

As you know, the President has declared a national emergency and the Governor has declared a state emergency due to the COVID-19 pandemic (the “Pandemic”). This letter gives notice of certain delays, additional costs and other impacts to the Project as a result of the Pandemic.

We remain committed to the Project and do not intend to be adversarial. However our [contract/subcontract] requires us to notify you of any impacts that will lead to extra costs or the need for additional time, and this letter gives you that notice. Further, we must work in a safe and reasonable manner and in compliance with governmental direction.

The Pandemic has and will continue to delay our work and will negatively impact productivity, including potential impacts to labor, personnel, manufacturing, equipment, materials and transportation. These delays and costs are beyond our control and through no fault of our own. They will adversely affect the critical path of the Project schedule and will require additional work and costs. Specifically, the known delays, costs and impacts include:

* State and/or local orders which have suspended construction activities. *Describe governmental orders, work stoppages or limited access to work site*.
* Schedule disruption: *Describe delays/ impacts/ inefficiencies/ out of sequence work, whether critical path or not.*
* Supply disruption/ cost escalations: *Describe delays in material, supplies or equipment, price increases/ rental increases/ reprocurement costs.*
* Labor disruption: *Describe labor shortages and/or illness among labor force*.
* Additional Work and costs to prepare the site, suspend work, and resume work: *Describe additional work and costs.*
* Additional General Conditions: *Describe additional costs for supervision, overtime, disruption, overhead, etc.*

Currently, we are able to provide the following documentation in support of our claim for additional time and costs:

[List available documentation, such as daily reports, impact schedule, photos, emails, invoices from suppliers, correspondence, photos, etc.]

We initially request an extension of Contract time of a minimum of \_\_\_\_\_\_ days, together with additional costs relating to the Pandemic. The full extent of these Pandemic delays and costs are not yet known and the impacts cannot yet be completely identified or quantified. We will continue to keep you informed and will provide additional information and documentation regarding our requests for additional time and costs as it becomes available.

The Pandemic was unanticipated, unforeseeable and beyond our reasonable control. We look forward to working with you to address the impacts of the Pandemic at the proper time and to move the Project toward successful completion. We reserve all rights and remedies afforded by the contract, governmental direction, by applicable law and in equity.

Wishing you the best during this time,

[SIGNATURE]