**24.02 MODIFICATION OF A CONTRACT**

In this case, the parties agree that they entered into a contract. [Party] claims that after the parties entered into the contract, the parties agreed to change the terms of the contract. [Party] denies this claim.

To find that the parties changed the contract’s terms, you must decide that it is more likely true than not true:

1. That both parties agreed to change the contract’s terms. A party may express agreement to change a contract term through words or conduct. A party’s agreement to change a contract term is established if a reasonable person under the same circumstances would conclude from the party’s words or conduct that the party agreed to change the contract term; and
2. That each party gave the other party something of value, or promised to give the other party something of value, in exchange for the other party’s agreement to change the contract’s terms.

If you decide that both of these things are more likely true than not true, then the parties changed their original contract. Otherwise, the parties did not change their original contract.

**Use Note**

This instruction may be used because the plaintiff wants to prove that a contract was modified and then breached, or because a defendant claims there was no breach because the parties modified the original contract. If there is a dispute about the original contract, Instruction 24.01A precedes this one.

Where the defendant is claiming modification without consideration, e.g., plaintiff's waiver, as an affirmative defense, Instruction 24.08G (waiver by election) should be given in place of this instruction. Where the plaintiff is claiming a waiver of the plaintiff's own defective performance by the defendant, a modified Instruction 24.08G should replace this one.

# **Comment**

Modification of the terms of a contract generally requires all of the elements needed to form the original contract. Both parties must agree to a change in the contract’s terms. In addition, Alaska law requires consideration for the modification of contracts which are not for the sale of goods. *Baker v. Ryan Air, Inc*., 345 P.3d 101, 110 (Alaska 2015). *Compare* AS 45.02.209(a) [UCC 2‑209] (agreements to modify or rescind contracts for the sale of goods need no consideration to be binding).

A written contract may be modified by an oral agreement coupled with conduct consistent with the claimed modification. *Baker*, 345 P.3d at 110-11 (affirming trial court’s finding that the facts did not support the claimed modification). *See also National Bank of Alaska v. J.B.L. & K. of Alaska, Inc.*, 546 P.2d 579, 586‑87 (Alaska 1976) (affirming trial court's refusal to infer a modification solely from the parties' conduct, absent a written modification or oral agreement to modify).