

AIA Contracts: Owner-Contractor Agreements

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AIA Contracts

I. Owner-Contractor Agreements

The Standard Form Agreement between the Owner and Contractor (the “General Contract”) governs the duties and obligations of the Owner and Contractor on the construction Project. While it is the first place to look in determining the respective party’s duties and obligations, the General Contract incorporates by reference the other documents which govern the project. These include the General Conditions for the Contract for Construction (Document A201-2017), any Supplemental General Conditions, the Project Specifications and Drawings and any other documents enumerated in the General Contract. As such, the General Contract must be read in conjunction with these other documents.

There are a number of different types of General Contracts published by the AIA which the parties may choose depending on the size and complexity of the Project. The major difference between these documents is whether the General Contract is for a Stipulated Sum (i.e., AIA Documents A101-2017 and A107-2017) or for the cost of the Work Plus a Fee with a negotiated Guaranteed Maximum Price (i.e., AIA Document A102-2017). In the Stipulated Sum General Contracts, the Contractor agrees to perform the work for a set price. In the Guaranteed Maximum Price General Contract, the Contractor is paid the cost of completing the work, plus a certain percentage of the cost, guaranteed not to exceed a certain dollar amount. The risk of the Project costing more to complete is upon the Contractor. A closer look at the provisions of these General Contracts will allow the parties on a Project to make an informed choice as to which General Contract best serves their needs.

A. Stipulated Sum (A101)

AIA Document A101 -2017 is the Standard Form Agreement between Owner and Contractor where the basis of payment is a Stipulated Sum. It is a relatively short document, but memorializes the basic agreement between the parties. The obligations between the parties in this document are relatively simple. The A101 cannot be understood without the A102.

Articles 1 and 9 clarify the term “Contract Documents.” Article 1 defines the Contract Documents as this Agreement, the General, Supplementary and Other Conditions of the Contract, the Drawings, Specifications, Addenda issued prior to execution of the Agreement, other Documents listed in the Agreement and Modifications issued after the execution of the Agreement. All of the aforementioned documents form the Contract and “are fully a part of the Contract as if attached to this Agreement or repeated herein.” Article 1. Via Article 1, the parties agree that the Agreement is a fully integrated contract. In other words, they agree that the written Contract is the entire, agreement between them and supersedes any prior negotiations, representations or agreements, whether written or oral. This is important if the parties agreed to something, it must appear in writing in the Contract Documents or it is not enforceable.

Article 9 specifically enumerates the Contract Documents, other than the Modifications (which by definition, could not exist at the time the Contract was executed). Article 9 lists the possible Agreements as AIA Document A101-2017; the General Conditions as AIA Document A201-2017; allows the parties to insert Supplementary or other Conditions, as contained in the Project Manual; the Specifications; the Drawings; the Addenda (except Addenda relating to bidding requirements); and any other documents listed. The Contract Documents should be defined with as much specificity as possible, including date, title and number in order to avoid confusion later. Notably, the AIA documents always cite to the most recent edition of the AIA documents (in many cases, a 2017 revision). It is important to ensure that the parties are using

the most current versions of the documents as these are the documents for which the AIA is currently issuing licenses. Additionally, unless specifically referenced in Paragraph 9, the bidding requirements *are not* part of the Contract Documents.

Article 2 defines the obligations of the Contractor simply: “The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.” Article 3 relates to the date of Commencement of the Project and the date for Substantial Completion. Specifically, the Date for Commencement of the Work is the date of the Agreement unless a different date is specified or the Agreement states that the date of commencement shall be fixed in a notice to proceed issued by the Owner. Paragraph 3.1. The time to complete the Work on the Project runs from the date of Commencement. Paragraph 3.2 and Paragraph 3.3.1 give the option to measure substantial completion by calendar days as measured from the date of commencement or by a specific date. However, the date for Substantial Completion is subject to the appropriate adjustments to the Contract Time, as provided for in the Contract Documents. Paragraph 3.2.1.

Article 4 relates to the Contract Sum to be paid to the Contractor. Paragraph 4.1 states the specific sum to be paid by the Owner for the Contractor’s performance of the Contract, subject to additions and deductions as provided for in the Contract Documents. Additionally, the parties may list any alternates which have been accepted by the Owner (Paragraph 4.2.1 and Paragraph 4.2.2) and any unit prices to be used on the Project, if applicable (Paragraph 4.3).

Article 5 deals with the payment process. It lists the specific requirements in addition to Article 9 of AIA Document A201. Payment is based upon Applications for Payment submitted by the Contractor to the Architect, and Certificates for Payment issued by the Architect.

Paragraph 5.1.1.¹ Applications for payment cover one (1) calendar month, ending upon the last day of the month, unless otherwise specified. Paragraph 5.1.2. Paragraph 5.1.3 states when the Architect must receive the Application for Payment and the date upon which the Owner is required to make payment after receipt of the Certificate. In the event that the Contractor submits its Application late, Paragraph 5.1.3 similarly fixes the number of days upon which the Owner is required to make payment. Paragraph 5.1.4 requires that each Application for Payment be based upon the Contractor's most recent schedule of values, which apportions the Contract Sum among the various portions of the Work. The Schedule of Values must be substantially accurate. Id. The Application for Payment must indicate the percentage complete of each portion of the Work as of the end of the period covered by the Application. Paragraph 5.1.5.

Paragraph 5.1.6 determines how each progress payment is determined. Initially it is a simple math calculation-multiply the portion of the Contract Sum allocable to completed work by multiplying the percentage of Work complete by its share of the Contract Sum as allocated in the Schedule of Values, minus any appropriate retainage. Paragraph 5.1.6.1. To this number, add the Contract Sum allocable to materials and equipment delivered and stored on site (or, if approved in advance by the Owner, off the site at a location agreed upon in writing) for subsequent incorporation on the Project, minus the appropriate retainage. Paragraph 5.1.6.2. To this number, subtract the aggregate of all previous payments made by the Owner. From this amount, subtract any amount which the Architect has withheld.

The amount as determined in Paragraph 5.1.6 may be further modified in certain instances. Certain scopes may eliminate retainage altogether. Paragraph 5.1.7.1. The percentage of retainage may be reduced by agreement of the parties. Paragraph 5.1.7.2. Under

¹ The Payment Process will be discussed herein elsewhere.

Paragraph 5.1.7.3, the Contractor may apply for release of retainage after substantial completion. The payment may also be increased, if Final Completion is materially delayed through no fault of the Contractor, by additional amounts payable in accordance with Subparagraph 9.10.3. of AIA Document A201-2017.

Paragraph 5.2 governs Final Payment. The Owner must issue Final Payment of the entire unpaid balance of the Contract Sum when: 1) the Contractor has fully performed the Contract except for its responsibility to correct Work (as required in Paragraph 12.2.2 of Document AIA A201) and satisfy other requirements which extend beyond final payment; and 2) a final Certificate of Payment has been issued by the Architect. Paragraph 5.2.1. The Owner is required to make its Final Payment to the Contractor no later than thirty (30) days after the issuance of the final Certificate for Payment by the Architect. Paragraph 5.2.2.

Document A101 contains few other obligations. Article 7.1 states that the Contract may be terminated by the Owner or Contractor as provided for in Article 14 of AIA Document A201 (2017) and that Work may be suspended by the Owner as provided for in that same Article. Article 8 contains miscellaneous provisions. Paragraph 8.1 states that reference to a specific provision of the Contract Documents refers to that provision as amended or supplemented by other provisions of the Contract Documents. Paragraph 5.3 addresses interest, stating that interest shall run from the date payment is due under the Contract Documents at the rate of interest stated in the Agreement or at the legal rate prevailing from time to time at the place where the Project is located. The Owner's representative and Contractor's representative are listed in Article 8 at Paragraphs 8.2 and 8.3 respectively. The parties further agree not to change their representative without ten (10) days written notice to the other party.

B. A104

AIA Document A104-2017, similarly to Document A101, had its genesis as a contract where the basis of payment is a stipulated sum. However, it was for use in smaller, less complicated Projects. The official title of this document is the Abbreviated Standard Form of Agreement Between Owner and Contractor for Construction Projects where the basis of payment is a Stipulated Sum. Ironically, it is a longer, more complicated agreement than AIA Document A101. This is because it incorporates an abbreviated version of the General Conditions (A201) for the Contract for Construction into the document itself rather than incorporating by reference AIA Document A201. This is important to remember, especially when using other AIA Documents which incorporate the General Conditions of AIA Document A201 by reference (such as the Subcontract, AIA Document A401) in conjunction with Document A104 as these additional documents must be modified so to be consistent.

The major difference between AIA Document A104 and A101 are the documents which are incorporated by reference. Document A104 states in Article 1 that the “Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.” Article 6 lists the Contract Documents. It is similar to Document A101, Article 9, with one exception: it does not incorporate the General Conditions as contained in AIA Document A201. AIA Document A104 incorporates an abbreviated version of the General Conditions at Article 7 *et seq.*

For all intents and purposes, Article 2 of AIA Document A104-2017, relating to the Date of Commencement and Substantial Completion, is similar to Article 3 of AIA Document A101.

Article 4 is a simplified version of the payment provisions. The Contractor in AIA Document A104-2017 is not required to create a schedule of values, but must submit

Applications to the Architect which are then certified and submitted to the Owner. Paragraph 4.1.1. Paragraphs 4.1.2 and 4.1.3 list when the Architect must receive the Application for Payment from the Contractor, the date upon which the Owner is required to make payment and, in the event that the Contractor submits its Application late, the number of days after which it receives the application that the Owner is required to make payment. However, Paragraph 4.1.5 allows for interest from the date payment is due.

Final Payment is also simpler than in AIA Document A101. The Owner must issue Final Payment of the entire unpaid balance of the Contract Sum when: 1) the Contractor has fully performed the Contract except for its responsibility to correct Work (as required in Paragraph 18.2) and satisfy other requirements which extend beyond Final Payment; 2) a final Certificate of Payment has been issued by the Architect; and 3) a Final Accounting has been submitted. Paragraph 4.2.1. The Owner is required to make its Final Payment to the Contractor no later than thirty (30) days after the issuance of the final Certificate for Payment by the Architect. Paragraph 4.2.2.

Beginning at Article 7, AIA Document A104-2017 list selected provisions of AIA Document A201. The belief of the AJA was that on smaller Projects, the parties do not need the extensive conditions contained in Document A201 and would, in fact, be overwhelmed by those General Conditions. But the General Conditions are a bit more vague. It is uncommon to use Document A104-2017 in the commercial construction context, as in most instances the parties will want to use Document A101 in conjunction with Document A201. For this reason, and because the majority of the clauses are identical to provisions in AIA Document A201, will be discussed in Section V, we will not review the General Conditions contained within Document A103-2017.

C. Cost Plus Fee with Guaranteed Maximum Price (A102, formerly A111-1997)

AIA Document A102-2017 is the Standard Form Agreement between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a negotiated Guaranteed Maximum Price. It is more of a construction manager type agreement. As will be discussed, the major difference between this document and AIA Document A101 is the manner of calculating Contract Sum, payment and an agreement that the Contract Sum will not increase over a maximum price, subject to certain adjustments. As such, Document A102-2017 is inconsistent with competitive bidding. This Agreement is more complex than AIA Document A101.

Similar to AIA Document A101, Articles 1 and 16 define the Contract Documents. Article 1 defines the Contract Documents identically as A101 as this Agreement, the General, Supplementary and Other Conditions of the Contract, the Drawings, Specifications, Addenda issued prior to execution of the Agreement, other Documents listed in the Agreement and Modifications issued after the execution of the Agreement. The aforementioned documents form the Contract and “are fully a part of the Contract as if attached to this Agreement or repeated herein.” Article 1. The parties once again agree that it is a fully integrated contract.

Article 16 specifically enumerates the Contract Documents, other than the Modifications identically to Document A101, Article 8. Article 2 defines the obligations of the Contractor identically to Article 2 of AIA Document A101: “The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.”

Article 3, however, is unique to Document A102-2017. This Article defines the relationship between the parties:

The Contractor accepts the relationship of trust and confidence established by this agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

Article 3. Such covenants are necessary to prevent the Contractor from billing up to the entire Guaranteed Maximum Price in order to make as large a fee as possible.

Article 4 relates to the date of Commencement of the Project and the date for Substantial Completion. The Date for Commencement of the Work is set out in three (3) options. If no methodology (notice to proceed or date of the agreement is selected, the date of commencement shall be the date of agreement by default). Paragraph 4.1. The time to complete the Work on the Project similarly runs from the date of Commencement. Paragraph 4.2. Paragraph 4.3 requires the Contractor to be substantially complete no later than x days from the date of Commencement or lists a specific date for substantial completion. The date for Substantial Completion is subject to adjustments. Paragraph 4.3.

Article 15 contains the Miscellaneous Provisions. It is identical to the provisions of Document A101 in relation to references being to amended provisions (Paragraph 15.1); Owner's representative and Contractor's representative (Paragraphs 15.3 and 15.4 respectively).

D. Cost

Since a Contractor under A102 is paid the Cost of the Work plus a fee, it is vital to define what costs may be included in the Cost of Work. Article 7 defines costs which may be reimbursed to the Contractor. Cost of Work is defined as the following:

[C]osts necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article 7.

Paragraph 7.1.1.

Recoverable costs include labor costs, such as: 1) wages of construction workers directly employed by the Contractor to perform construction of the Work at the site or, with the Owner's approval, off-site workshops (Paragraph 7.2.1); 2) wages or salaries of the Contractor's supervisory and administrative personnel when stationed on the site with the Owner's approval (if the Contractor is seeking the recovery of costs associated with home office personnel, they must be listed) (Paragraph 7.2.1); 3) wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work (Paragraph 7.2.3); and 4) costs paid for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for those not covered by such agreements, customary benefits, including sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries covered under Paragraphs 7.2.1-7.2.3 (Paragraph 7.2.4). Payments made to Subcontractors also recoverable. Paragraph 7.3.

Materials and equipment costs are recoverable. These may include the costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction. Paragraph 7.4.1. The costs of materials in excess of those actually installed are recoverable, so as to allow for reasonable waste and spoilage, with the caveat that unused excess materials become the Owner's property at the completion of the Work or, at the Owner's option shall be sold by the Contractor and credited to the Owner as a deduction from the Cost of the Work. Paragraph 7.4.2. The Contractor may recover for certain other materials and equipment, temporary facilities and related items. These include cost, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by

construction workers that are provided at the site by the Contractor and fully consumed in the performance of the work and the fair market value (less salvage value) of items not fully consumed (Paragraph 7.5.1); rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided at the site by the Contractor and costs of transportation, installation, minor repairs and replacements, dismantling and removal, such rental rates and quantities subject to the Owner's prior approval (Paragraph 7.5.2); costs of removal of debris from the site (Paragraph 7.5.3); costs of document reproduction, faxes, telephone calls, postage, parcel delivery and reasonable petty cash expenses of the site office (Paragraph 7.5.4); and costs of materials and equipment suitably stored off site at a mutually acceptable location, if approved by the Owner (Paragraph 7.5.3).

The Contractor may similarly recover various miscellaneous costs. These include insurance and bond premiums directly attributed to the Contract (Paragraph 7.6.1); sales or similar taxes related to the Work (Paragraph 7.6.2); fees and assessments for the building permit and other permits, licenses and inspections which the Contractor is required to pay (Paragraph 7.6.3); fees of laboratories for tests required by the Contract Documents, except those relating to defective or non-conforming Work for which reimbursement is excluded (Paragraph 7.6.4); royalties and license fees paid for the use of a particular design , process or product required by the Contract Documents (Paragraph 7.6.5); data processing costs related to the Work (Paragraph 7.6.6); deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner (Paragraph 7.6.8); legal, mediation and arbitration costs, including attorney's fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of Work and with the Owner's prior written approval, which approval shall not be unreasonably withheld (Paragraph

7.6.9); and expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for Work, if approved by the Owner (Paragraph 7.6.10).

The Contractor may recover costs incurred in the performance of the Work to the extent they were approved in advance in writing by the Owner. Paragraph 7.7.1. Costs incurred in taking action to prevent threatened damage, injury or loss in case of emergency affecting the safety of persons and property are likewise recoverable. Finally, the Contractor may recover the costs of repairing or correcting damaged or nonconforming Work provided that such damage was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers. Paragraph 7.7.3.

Certain costs are specifically excluded from reimbursement. These include: 1) salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or off-site except as specifically provided for in paragraphs 7.2.2 and 7.2.3; 2) expenses of the Contractor's principal office and offices other than the site office; 3) overhead and general expenses, except as expressly included in Article 7; 4) the Contractor's capital expenses, including interest on capital employed for the Work; 5) rental costs of machinery and equipment, except as provided for in Paragraph 7.5.2; 6) except as provided for in Paragraph 7.7.3, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable; 7) any cost not specifically and expressly described in Article 7; and 8) costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

Due to the compensation arrangement in Document A102, certain credits accrue to the benefit of the Owner rather than the Contractor. For example, any discounts obtained by the Contractor accrue to the Owner if the Contractor included full payment in an Application for Payment and received payment therefor, or the Owner deposited funds for the Contractor in the full amount. Paragraph 9.1. Otherwise, discounts accrue to the Contractor. Id. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment also accrue to the Owner. Id. Any amounts accruing to the Owner may be credited to the Owner as a deduction from the Cost of Work. Paragraph 9.2.

There are specific provisions in AIA Document A102 dealing with Subcontractors. The Contractor's ability to hire Subcontractors is significantly restricted under Document A102. If a Contractor does not customarily perform Work with its own personnel, it may be performed by a Subcontractor. Paragraph 10.1. The Owner may designate from whom the Contractor shall obtain bids. Id. The Contractor must obtain the bids and submit them to the Architect. Id. The Owner will then determine which bids to accept, with the advice of the Architect and Contractor. Id. However, the Contractor is not required to enter into a Contract with anyone with whom it has a "reasonable objection." Id. Additionally, if a bidder is recommended to the Owner by the Contractor and the bidder is qualified to perform the Work and has submitted a proper bid, and the Owner requires that the Contractor accept another bid, the Contractor may obtain a Change Order to increase the Guaranteed Maximum Price of the Contract by the difference between the bids. Paragraph 10.1.

In order to allow the Owner to properly evaluate the costs on the Project, the Contractor is contractually required to keep detailed accountings and exercise the controls necessary to properly manage the Contract. Article 11. The Owner and the Owner's accountants must be

allowed to audit and copy the Contractor's records. Id. Additionally, the Contractor must maintain these records for a minimum of three (3) years after Final Payment, or for such longer period as the law may require. Id.

Under AIA Document A102, the payment process also differs from Document A101. Article 12 governs the payment process. Similar to Document A101, Applications for Payment cover one (1) calendar month, ending upon the last day of the month, unless otherwise specified. Paragraph 12.1.2 and Paragraph 12.1.3 state when the Architect must receive the Application for Payment and the date upon which the Owner is required to make payment, even in the event that the Contractor submits its Application late, the Contractor must submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers and other evidence required by the Owner indicating that cash disbursements made equal or exceed progress payments already received, less the portion attributable to the Contractor's Fee, plus payrolls for the current application. Paragraph 12.1.4. While the Application for Payment is based on a Schedule of Values, the Schedule of Values allocates the Guaranteed Maximum Price among the portions of the Work, with a single line item for the Contractor's Fee. Paragraph 12.1.5. The Architect bases its review upon the Schedule of Values. Id. The Application must show the percentage of Work complete. Paragraph 12.1.6. The percentage complete is the lesser of: 1) the percentage of the portion of the Work which has actually been completed; or 2) the percentage obtained by dividing the expense actually incurred by the Contractor on that portion of the Work for which the Contractor intends to make actual payment by the portion of the Guaranteed Maximum Price allocated to that portion of the Work. Id.

Paragraph 12.1.7 determines how each progress payment is computed. The Owner takes the portion of the Guaranteed Maximum Price allocable to: 1) completed work; 2) materials and

equipment stored on site (or off site, if properly approved by the Owner); 3) the Contractor's Fee (less retainage), as listed in Paragraph 5.1.1 or at the same percentage as the preceding clauses, and subtracts 1) the previous payments made; 2) any shortfall indicated in the documentation or resulting from errors; and 3) any amounts withheld by the Architect. Paragraph 12.1.7.2.

Paragraph 12.1.12 insulates the Architect from liability in its review of the Payment Application, stating that the Architect is entitled to rely on the accuracy and completeness of the information furnished by the Contractor and that it has not made a detailed examination of the data submitted or exhaustive examinations of the site. Final Payment of the balance of the Contract Sum must be made when: 1) the Contractor has fully performed the Contract except for its responsibility to correct Work (as required in Paragraph 12.2.2 of AIA Document A201) and satisfy other requirements which extend beyond final payment; and 2) a final Certificate of Payment has been issued by the Architect. Paragraph 12.2.1. The Owner is required to make its Final Payment to the Contractor no later than thirty (30) days after the issuance of the final Certificate for Payment by the Architect. Paragraph 12.2.2.

The Owner's accountants may review and report on the Contractor's final accounting within thirty (30) days after delivery of the final accounting from the Architect to the Owner. Paragraph 12.2.2. Within seven (7) days of receiving a written report from the Owner, the Architect may issue a final Certificate for Payment or notify the Contractor and Owner in writing as to the reason for withholding certification. Paragraph 12.2.22. If the Owner's accountants report that the Cost of Work is less than the Contractor's final accounting, the Contractor may demand mediation without a further decision of the Architect. Paragraph 12.2.23. The demand for mediation must be made within thirty (30) days after the receipt of the final Certificate of Payment; otherwise, the balance as determined by the Owner's accountants becomes binding.

Id. The Owner must pay the Contractor the amount certified pending the final determination of the dispute. Id. If, after final payment and at the Owner's request, the Contractor incurs costs to correct defective or nonconforming Work, the Owner must reimburse the costs and Contractor's Fee attributable thereto as if they had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

The termination provisions also vary. While the Contract may be terminated by the Contractor or the Owner for convenience pursuant to Article 14 of AIA Document A201, the amount to be paid to the Contractor is determined under Paragraph 13.2, except that the Contractor's Fee is calculated as if the Work was fully completed, including a reasonable estimate of the Cost of Work for Work not actually completed. Paragraph 13.1. The Contract also may be terminated for cause by the Owner. Paragraph 13.2. However, the amount to be paid to the Contractor shall not exceed the Guaranteed Maximum Price and is calculated by taking the Cost of Work as of the date of termination, adding the Contractor's Fee computed upon the Cost of Work as of the date of termination, and subtracting the previous payments made by the Owner. Id. Additionally, work may be suspended by the Owner as provided in AIA Document A201; however, the Guaranteed Maximum Price and Contract Time must be increased as provided in AIA Document A201 Paragraph 14.3.2 except that "profit" shall be defined as the Contractor's Fee.

E. Guaranteed Maximum Price ("GMP")

The determination of the Contract Sum is a major difference between Document A102 and Document A101. In Document A102, the Owner agrees to pay the Contractor the Contract Sum for performance of the Contract. Paragraph 5.1.1. The Contract Sum is defined as the Cost of Work (as Defined in Article 7) plus the Contractor's Fee. Id. The Contractor's Fee is listed in

Paragraph 5.1.1. It may be in the form of a lump sum, percentage of the Cost of Work or other alternative. However, it should describe how to adjust the Contractor's Fee in the event of changes to the Contractor's Work.

Document A102 has a Guaranteed Maximum Price ("GMP") component. In other words, the Contractor agrees that the Cost of the Work and the Contractor's Fee will not exceed a certain dollar value, subject to additions and deductions via Change Order. Paragraph 5.2.1. Any Costs exceeding the GMP are the responsibility of the Contractor, without reimbursement to the Owner. Id. The parties may base the GMP upon alternates (Paragraph 5.2.2); allowances (Paragraph 5.2.4); or any other assumptions (Paragraph 5.2.4). If the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor must provide for further development consistent with the Contract Documents and reasonably inferable therefrom in the GMP. Paragraph 5.2.5. Notably, such anticipated further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which must be incorporated by Change Order to the Contract. Id.

Because the Contractor is responsible for costs above the GMP, it is crucial that the parties address changes in the Work in the Agreement. Changes in the Work are addressed in Article 6. Adjustments to the GMP due to changes in the Work may be determined as listed in Paragraph 7.3.3 of AIA Document A201. The definitions of Paragraph 7.3.3 of Documents A201 are modified in calculating adjustments to the GMP; cost and costs as used in Document A201 mean the Cost of Work as defined in Article 7 of AIA Document A102, while fee and a reasonable allowance for overhead and profit mean the Contractor's Fee as defined in Paragraph 5.1.1. Paragraph 6.3. In the event that Paragraph 5.1.2 does not provide for adjustment of the Contractor's Fee in the case of Changes to the Work or if the changes are of such a type that

application of the adjustment provisions will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the fee established for the original Work, and the GMP adjusted accordingly. Paragraph 6.4.

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