

Guide for Supplementary Conditions, Construction Manager as Adviser Edition including Amendments to AIA Documents A232-2019, General Conditions, and A132-2019, Owner-Contractor Agreement

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INTRODUCTION

Purpose of This Guide

This guide serves two purposes: it provides guidance to assist in preparing the Contract for Construction, and it provides model language that may be used to amend or supplement the Contract for Construction.

Because of variations in the nature of individual projects, requirements of individual owners, and variations in specific legal requirements from locality to locality, a nationally distributed standardized document cannot provide all of the basic requirements which must be included for purposes of construction. Project-specific information must be included in one of four locations:

- a. in the bidding requirements (note, bidding requirements are not part of the Contract Documents unless specifically identified as such in the enumeration of Contract Documents.);
- b. in the Owner-Contractor Agreement, including the Insurance Exhibit;
- c. in modifications or supplements to the General Conditions of the Contract for Construction ; or
- d. in the Specifications, particularly in the General Requirements (Division 1).

This Guide provides instructions, suggested model language for project-specific issues, and recommendations for where to place project-specific information.

The information and model language presented in this Guide follows the article and section numbering of A232–2019. However, the guidance and model language presented is also applicable to other AIA agreements.

This Guide is not a standard form supplementary conditions document. Model language is sometimes presented in alternative versions, and some language presented may not be appropriate for a particular project. Because of its flexibility, this Guide is intended to be used as a working tool to help you develop and present in an orderly way the additional information needed as part of the Contract Documents for a specific project.

The Conditions of the Contract are ultimately the Owner’s responsibility. However, the Construction Manager and Architect assist the Owner in preparing the Contract for Construction, and the Contractor may also serve that role. This Guide is useful for Owners, Construction Managers, Architects and Contractors alike when assembling procurement information and the various components of the Contract for Construction.

How to Use This Guide

This Guide assumes that modifications will be made directly in the text of AIA Contract Documents in electronic format. However, Supplementary Conditions may be assembled as a separate document cross-referenced to the appropriate AIA Contract Document.

The Guide is printed in two typefaces. Times New Roman 10-point typeface indented from the body text of the Guide, is used only for material that is intended as actual model language which may be used for a specific project, and represents material that may be added to, deleted or revised, and then incorporated into the General Conditions or Supplemental Conditions documents. Arial 10-point typeface is used for explanatory notes and identifies items needing attention.

Some Owners, notably governmental agencies, require the use of their own standard documents, such as instructions to bidders or general conditions, and have particular requirements for supplementary conditions. These must be carefully reviewed and correlated with any wording taken from this Guide.

Choice of Location for Contract Provisions

The choice of location for contract provisions is based on the following principles, which have been generally agreed upon by representatives of the various professional societies and associations in the construction industry:

- 1) Matters affecting the bidding process but which have no import or effect after the Contract is awarded should be included in the Advertisement or Invitation to Bid, Instructions to Bidders or Supplementary Instructions to Bidders, or elsewhere in the Bidding Requirements.
- 2) The essential terms of the Contract, such as the Contract Sum (which is often confidential), definition of the Work, and similar matters are generally included in the Owner-Contractor Agreement forms.
- 3) Matters affecting the basic legal rights and responsibilities of the parties involved in the construction process, and that are generally applicable to most construction projects are included in the General Conditions of the Contract.
- 4) Matters affecting the basic legal rights and responsibilities of the parties to the Contract that may vary from one project to another, or that respond to specific legal constraints in the jurisdiction, should be handled in the Supplementary Conditions.
- 5) Detailed administrative and procedural requirements (e.g., temporary facilities) should be further specified in the General Requirements (Division 1 of the Specifications). Division 1 expands on certain sections of the broad provisions in the General Conditions and governs the execution of all other sections of the Specifications. Proper coordination of Division 1 and Supplementary Conditions will avoid conflict, omission and duplication.

This Guide gives the preferred location for all of the items discussed herein. These points are restated here to offer guidance in deciding where to locate other items that may be determined to be necessary for a specific project.

Modifications to the Contract for Construction

Because AIA Contract Documents are carefully coordinated to be used together, the complete deletion of a particular provision should be avoided. Section deletions and re-numbering of sections can conflict with carefully coordinated internal references and cross references to other agreements.

GUIDANCE AND MODEL LANGUAGE

I. AMENDMENTS TO A132-2019, OWNER-CONTRACTOR AGREEMENT, CONSTRUCTION MANAGER AS ADVISER EDITION

AIA Document A132–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, is used as the frame of reference for the items discussed in this section. The numbering in the sections below follows the numbering of the relevant provisions in A132–2019.

ARTICLE 4 CONTRACT SUM

§ 4.5 Liquidated Damages

Liquidated damages are sum(s) that the parties agree, at the time of contracting, will be the Owner's remedy for any damages that the Owner will claim as a result of the Contractor's failure to achieve Substantial Completion within the Contract Time, as provided in the Owner-Contractor Agreement. Unless otherwise expressly stated in the Contract, liquidated damages will be the Owner's sole remedy for the Contractor's delay in achieving Substantial Completion and the Owner would be precluded from recovering other types of damages, including direct, consequential, and special damages resulting from delay. In A132-2019, a distinction is made in Article 3 between the date of Substantial Completion of the Work of all of the Contractors for the Project (Section 3.3), and the date that the Work of "this Contract" shall be substantially completed by the Contractor (Section 3.4). Section 3.4.3 states that liquidated damages are assessed for failure to "substantially complete the Work of this Contract," as specified in Section 3.4.

Usually, a liquidated damages provision is inserted in the Agreement between the Owner and Contractor, allowing the parties to define the appropriate terms and conditions related to the assessment of liquidated damages.

The language shown here is a suggested guide. It should not be included without review by the Owner's attorney and concurrence of the Owner.

Care must be taken to avoid even the appearance that a liquidated damages provision will be used to extract a penalty—an amount that is not a reasonable measure of the anticipated actual damages. If it is found that the liquidated amount is disproportionate to the anticipated harm, or if there is no anticipated harm, then the amount may be judged to be an unenforceable penalty. Penalties in contracts are not generally enforceable for public policy reasons—the few exceptions are typically made by statutes granting authority to public entities, cities and municipalities.

A liquidated damages provision will often address the following items: (1) the date or event that triggers the commencement of the assessment of liquidated damages; (2) the date or event that triggers the termination of the assessment of liquidated damages or a monetary cap on the amount of liquidated damages, if any; and (3) the monetary amount of liquidated damages to be assessed, the incremental period of time for each assessment (calendar day, etc.), and whether that amount is uniform or variable over time.

It is generally recommended that liquidated damages provisions be:

1. enumerated in the Owner-Contractor Agreement; and
2. highlighted in AIA Document A701, Instructions to Bidders, to inform all potential participants in the project in advance of the potential for exposure to such damages.

If the Owner and Contractor agree to include a provision for liquidated damages in the A132-2019 Owner-Contractor Agreement, and there is a single date for the entire Work of the Contractor to be substantially complete, the following Model Language may be used.

OPTION A

If liquidated damages are to be uniform for the period of assessment, insert the following in the fill point at Section 4.5 of Article 4:

Model Language:

If the Contractor fails to substantially complete the Work within the Contract Time as set forth in Section 3.4.1, the Contractor shall be liable for the sum of _____ dollars (\$ _____) as liquidated damages, and not as a penalty, for each calendar day beginning on the first day after the Contractor fails to substantially complete the Work within the Contract Time until the date that the Work is substantially complete.

OPTION B

If liquidated damages are to be variable for the period of assessment, insert the following in the fill point at Section 4.5 of Article 4:

Model Language:

If the Contractor fails to substantially complete the Work within the Contract Time as set forth in Section 3.4.1, the Contractor shall be liable for the sums stipulated below, as liquidated damages and not as a penalty: (1) for each calendar day beginning on the first day after the Contractor fails to substantially complete the Work within the Contract Time for a period of _____ days (the "Initial Period"): _____ Dollars (\$ _____); and (2) for each calendar day beginning on the day after the Initial Period until the date that the Work is substantially complete: _____ Dollars (\$ _____).

If the Owner and Contractor agree to include provisions for liquidated damages in the A132-2019 Owner-Contractor Agreement and there are multiple dates when the Work is to be substantially complete for different portions of the Work set forth in Section 3.4.2, then the liquidated damages provisions may address the damages appropriate to each date on which a portion of the Work is to be substantially complete.

Circumstances may justify a cap on the total amount of liquidated damages that may be assessed against the Contractor. In those circumstances, the parties may consider adding the following language to the language selected under Option A or Option B above:

Model Language

Under no circumstances shall the total amount of liquidated damages exceed the sum of _____ Dollars (\$ _____).

§ 4.6 Bonus

Below is an example of a bonus provision that may be used to counterbalance a liquidated damages provision such as those shown in Section 4.5. To overcome the public policy objection against penalties in contracts, some parties believe that a bonus counterpoint will cause a court to look more favorably on a liquidated damages provision.

It is not a recommended practice to employ such a provision without specific advice from local legal counsel.

Bonus provisions should be used when the Owner will obtain a benefit if the Contractor completes the construction prior to the time set for the Contractor's Work to be substantially complete. On occasion, the Owner may not desire early completion because of the timing requirements of other commitments, such as mortgage closings or the commencement of tenant leases. The model language below assumes substantial completion of the entire Work.

Add the following to Section 4.6 of Article 4:

Model Language:

The Owner shall pay, as a bonus to the Contractor, a sum of _____ Dollars (\$ _____) for each calendar day preceding the date established for the Work of this Contract to be substantially complete pursuant to Section 3.4 and that the Work is determined to be substantially complete by the Architect.

ARTICLE 5 PAYMENTS

§ 5.1.7 Retainage

Retainage is an amount specified in the Agreement that is withheld by the Owner from each of the Contractor's progress payments until the Work of the Contract is substantially complete. Retainage may be withheld as a constant or variable percentage for the entire application, or retainage may be withheld differently based upon each line item in the schedule of values. The amount, purpose, and conditions for release, of retainage are typically governed by state law. Be sure to consult with legal counsel before finalizing the provisions for retainage.

Parties may select certain items in the schedule of values that are not subject to retainage, which might include costs for which the Contractor must make full payment in a timely manner. These items would be inserted in Section 5.1.7.1.1 of A132-2019 and may include insurance and bond premiums, permits, and deposits for long lead items.

Reduction or limitation of retainage may take different forms with respect to timing and amount. The following model language may be used to reduce or limit retainage.

OPTION A

Option A provides for line item retainage. This method applies retainage, and any reduction thereof, equally to all phases of the Work. Thus, early finishing Subcontractors (e.g. foundations, structural steel) can have their retained funds reduced when they have satisfactorily performed 50% of their Subcontracts, without waiting for the entire Project to be 50% complete. Coordination with the

language in Section 9.8.5 of A232–2019 will be required because that section requires release of all retainage at Substantial Completion.

Add the following to Section 5.1.7.2 of A132-2019, Article 5:

Model Language:

Until the entire Work of this Contract is substantially complete, the Owner may withhold _____ percent (___%) of the amount due the Contractor on account of progress payments, as applied to each line item in the schedule of values approved by the Architect, until that line item is fifty percent (50%) complete, and thereafter there shall be no additional retainage on that line item.

OPTION B

Option B provides for progress payments in full to the Contractor after the Work is 50% complete. This method may apply the burden of retainage unequally to any Subcontractors performing the Work of the Contract (referred to throughout A132-2019 as the Work of this Contract); requiring full retainage to be withheld on Work performed during the first half of construction of the Work of the Contract, but no retainage to be withheld on Work performed during the second half of construction of the Work of the Contract. Coordination with the language in Section 9.8.5 of A232–2019 will be required because that section requires release of all retainage at Substantial Completion.

Add the following to Section 5.1.7.2 of Article 5:

Model Language:

Until the Work of this Contract is fifty percent (50%) complete, the Owner may withhold _____ percent (___%) of the amount due the Contractor on account of progress payments. At the time the Work of this Contract is fifty percent (50%) complete and thereafter, there shall be no additional retainage withheld.

ARTICLE 7 TERMINATION OR SUSPENSION

§7.1.1 Termination Fee

Under Section 14.4.3 of AIA Document A232-2019, if an Owner terminates the Agreement for convenience, the Owner pays the Contractor for:

1. work properly executed;
2. costs incurred by reason of the termination, including costs attributable to termination of subcontracts; and
3. a termination fee, if any, set forth in the Agreement.

The place to enter the termination fee appears as a fill-point in Section 7.1.1.1 of AIA Document A132–2019. This termination fee is intended to be a negotiated amount (or means to compute an amount) that liquidates the Owner’s liability to the Contractor for claims based on the Contractor’s lost business opportunity and overhead and profit on the Contractor’s unperformed Work. It is not designed to completely liquidate the Owner’s liability for termination because claims from the Contractor’s subcontractors and suppliers may be separately payable to the Contractor under Section 14.4.3 of AIA Document A232-2019 as “costs attributable to termination of subcontracts.” Under Section 7.2.2.2 of AIA Document A401-2017, if the Owner terminates the Contractor for convenience, the Subcontractor is entitled to receive payment for Work properly executed, costs incurred by reason of the termination, and reasonable overhead and profit on the Work not executed.

The termination fee can be structured as a flat fee, a percentage of the Contract Sum, or as a tiered payment system based upon the stage of completion of the Project. Several options are given below.

OPTION A

If the Owner and Contractor agree to a flat termination fee, the following Model Language may be used.

Add the following to Section 7.1.1.1 of A132-2019, Article 7:

Model Language:

The termination fee shall be _____ Dollars (\$) _____).

OPTION B

If the Owner and Contractor agree to a percentage of the unpaid Contract Sum for the termination fee, the following Model Language may be used.

Add the following to Section 7.1.1.1 of A132-2019, Article 7:

Model Language:

The termination fee shall be _____ percent (____%) of the value of the unpaid Contract Sum for the Work remaining to be performed as of the date of the Notice of termination.

OPTION C

If the Owner and Contractor agree to a tiered payment system for the termination fee, based upon the stage of completion of the Project, the following Model Language may be used.

Add the following to Section 7.1.1.1 of A132-2019, Article 7:

Model Language:

The termination fee shall be a percentage of the value of the unpaid Contract Sum for the Work remaining to be performed as of the date of the Notice of termination as follows:

Percent of Work remaining to be performed as of the date of the Notice of Termination	Percentage to be Applied to the Value of the Contract Sum for Work remaining to be performed
Greater than 75%	
75% - 25%	
Less than 25%	

Should the parties desire to establish a termination fee to liquidate the Owner’s entire liability for lost opportunity and overhead and profit on the Work remaining to be performed as of the date of the Notice of Termination, inclusive of the Contractor, its Subcontractors and suppliers, the following Model Language may be included in AIA Document A232-2019:

Delete 14.4.3 of A232–2019 and substitute the following:

Model Language:

In case of termination for the Owner’s convenience, the Owner shall pay the Contractor for (1) Work properly executed; (2) costs incurred by reason of the termination, including costs attributable termination of Subcontracts; and (3) the termination fee, if any, set forth in the Agreement. The termination fee set forth in the Agreement, if any, is intended to be the sole compensation to the Contractor for overhead and profit on Work not executed by the Contractor, as well as any compensation the Contractor is obligated to pay Subcontractors, and suppliers for overhead and profit on Work not executed.

In addition to the change in the General Conditions, the provisions of the Contractor-Subcontractor Agreement will require modification, modify Section 7.2.2.2 of the AIA Document A401-2017 Contractor-Subcontractor Agreement as follows:

Model Language:

In case of termination for the Owner’s convenience, the Subcontractor shall be entitled to receive payment for Work properly executed; costs incurred by reason of the termination; and a termination fee, if any, as provided in the Prime Contract and as reasonably apportioned by the Contractor to the Subcontractor’s Work. The termination fee, if any, set forth in the Prime Contract and as apportioned by the Contractor to the Subcontractor, is intended to be the sole compensation to the Subcontractor for overhead and profit on Work not executed.

II. AMENDMENTS TO GENERAL CONDITIONS AND SUPPLEMENTARY CONDITIONS

AIA Document A232–2019, General Conditions of the Contract for Construction, is used as the framework to which all of the items discussed in this section are related. The numbering in the sections below follows the numbering of the relevant provisions in A232–2019.

SUGGESTED INTRODUCTORY PARAGRAPH TO SUPPLEMENTARY CONDITIONS

If Supplementary Conditions will be placed in a separate document, an introductory paragraph to explain their purpose may be helpful, such as:

Model Language:

The following supplements modify AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

Certain corporate clients or governmental agencies may require the use of terms such as “Project Manager,” “Contracting Officer” or others which may have important and necessary connotations, and these terms should be defined here.

§ 1.1.1 If a client requires that the bidding requirements and other documents be included in the Contract Documents, the specific documents should be enumerated in the Agreement between the Owner and Contractor. It may also be advisable to bring this to the attention of Bidders in the Instructions to Bidders.

§ 1.1.4 The Project

If the Work the Contractor will perform does not constitute the total Project; the relationship and coordination of the Contractor’s Work to that of other Contractors, Separate Contractors, or the Owner’s own forces, including persons or entities under separate contracts not administered by the Construction Manager, should be made clear in the Contract Documents. General information should be provided concerning the relationship of the Contractor’s activities to the activities of other Contractors, Separate Contractors, or the Owner in the General Requirements (Division 1 of the Specifications).

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The AIA General Conditions do not establish a system of precedence among the Contract Documents, but provide that all documents are complementary. In the event of inconsistencies among the Contract Documents, the Architect is to interpret them to reflect the design intent. Establishing a fixed order of priority is not recommended because no one document constitutes the best authority on all issues that may arise. The order shown here is suggested for consistency in the event an Owner insists on establishing a precedent. Note that this modification does not establish a precedent between Drawings and Divisions 2 through 49 of the Specifications, which together describe the Work.

Add Section 1.2.1.2 to Section 1.2.1:

Model Language:

§ 1.2.1.2 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

- .1 Modifications.
- .2 The Agreement.
- .3 Addenda, with those of later date having precedence over those of earlier date.
- .4 The Supplementary Conditions.
- .5 The General Conditions of the Contract for Construction.
- .6 Division 1 of the Specifications.
- .7 Drawings and Divisions 2–49 of the Specifications.
- .8 Other documents specifically enumerated in the Agreement as part of the Contract Documents.

In the case of conflicts or discrepancies between Drawings and Divisions 2–49 of the Specifications, or within or among the Contract Documents and not clarified by Addendum, the Architect will determine which takes precedence in accordance with Sections 4.2.18, 4.2.19, and 4.2.20.

ARTICLE 2 OWNER

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 When, after award of the Contract, the Project is subject to a prolonged review or approval process by governmental or other agencies, it is desirable to describe this process and to state (1) whether the Construction Manager or Contractor is expected to play any role in the process and (2) the effect this process may be expected to have on the commencement of the Work and the progress schedule.

§ 2.3.5 It may be necessary in some instances to amend or supplement this section to describe more fully the surveys which the Owner will furnish (i.e., metes and bounds only or topographical).

§ 2.3.6 Under Section 2.3.6, the Owner is required to provide the Contractor with one copy of the Contract Documents in paper format free of charge. If the Owner will provide the Contractor with Contract Documents in digital format rather than paper, the following language may be substituted for Section 2.3.6.

Delete Section 2.3.6 and substitute the following:

Model Language:

§ 2.3.6 The Owner shall furnish the Contract Documents to the Contractor in digital format. If the Contractor requires paper documents, the Contractor shall be responsible for the costs of producing such paper documents.

ARTICLE 3 CONTRACTOR

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

In B132™–2019, Section 3.6.4.4 provides for the Architect's review of the Contractor's requests for information. In addition, Section 4.2.2 of B132–2019 provides that the Architect's services in responding to Contractor's requests for information, where such information is already available to the Contractor, are Additional Services. The following model language may be used to provide consistency between A232 and B132 provisions where the Owner intends to obtain reimbursement from the Contractor for the Architect's review of Contractor's requests for information. Using AIA Document G716™–2004, Request for Information, may mitigate problems associated with such requests.

Add the following Section 3.2.5 to Section 3.2:

Model Language:

§ 3.2.5 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for evaluating and responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where the requested information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.4 Labor and Materials

§ 3.4.2 The following language may be used in situations where the Owner has agreed to allow for consideration of substitutions after the Contract has been executed. This section establishes the criteria for submission and evaluation of substitution requests. Language regarding the substitution process should be included in the General Requirements (Division 1 of the Specifications). Note that when there is more than one construction contract, substitutions must be fully coordinated across the Work of all Contractors.

Add Section 3.4.2.1 to Section 3.4.2:

Model Language:

§ 3.4.2.1 After the Contract has been executed, the Owner and Architect may consider requests for the substitution of products in place of those specified. The Owner and Architect may, but are not obligated to, consider only those substitution requests that are in full conformance with the conditions set forth in the General Requirements (Division 1 of the Specifications). By making requests for substitutions, the Contractor:

- .1 represents that it has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to the product specified;
- .2 represents that it will provide the same warranty for the substitution as it would have provided for the product specified;
- .3 certifies that the cost data presented is complete and includes all related costs for the substituted product and for Work that must be performed or changed as a result of the substitution, except for the Architect's redesign costs, and waives all claims for additional costs related to the substitution that subsequently become apparent;
- .4 agrees that it shall, if the substitution is approved, coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects: and
- .5 represents that the request includes a written representation identifying any potential effect the substitution may have on the Project's achievement of a Sustainable Measure or the Sustainable Objective.

Substitutions proposed by the Contractor must be evaluated by the Architect and, if accepted, may require revision of the Drawings and Specifications. The resulting demands on the Architect's time and other resources may entitle the Architect to an adjustment in compensation, as is the case under Section 4.2.2.5 of AIA Document B132–2019. The following language allows the Owner to pass this expense on to the Contractor. This language should be used on Projects where the Owner is prepared to deal with disputes that may arise from enforcement of this provision—for example, in situations where the Architect evaluates and then rejects the Contractor's proposed substitution. The Owner and Architect should also be prepared to deal with proposed substitutions that benefit the Owner.

Add the following to the end of Section 3.4.2:

Model Language:

§ 3.4.2.2 The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for reviewing the Contractor's proposed substitutions and making agreed-upon changes in the Drawings and Specifications resulting from such substitutions.

§ 3.5 Warranty

Note that the terms of the warranty under Section 3.5.1 are separate and distinct from the Contractor's obligation to correct the Work, as required under Section 12.2. Special warranties such as, manufacturers' warranties, roofing warranties, or HVAC warranties, in the technical sections of the Specifications may also limit or expand obligations under this warranty. It is strongly suggested that Section 3.5 only be modified with legal advice.

§ 3.6 Taxes

Certain non-profit organizations may be wholly or partially tax-exempt. Since the degree of tax exemption varies from jurisdiction to jurisdiction, the Owner should provide the exact language for statements concerning tax exemption for inclusion in the Supplementary Conditions.

§ 3.7 Permits, Fees, Notices, and Compliance with Laws

§ 3.7.1 Where separate contracts are used, the permits and governmental fees, licenses and inspections each contractor is required to obtain and pay for should be listed to avoid duplication or error. In certain circumstances the Owner may elect to obtain the building permit, certain permits may not be required, or the Owner may elect to pay for, or reimburse the Contractor for, other fees. In those cases, this section should be appropriately modified. Attention should be given to Section 2.3.1 which relates to this issue.

§ 3.8 Allowances

§ 3.8.1 Allowances should be specified in the General Requirements (Division 1 of the Specifications) with appropriate references in the particular sections of the Specifications. If allowances are to be expended by Subcontractors rather than directly by the Contractor (for example, an allowance for the

purchase of special light fixtures), the information in the General Requirements (Division 1 of the Specifications) should clarify that the Subcontractor's overhead, profit, handling and other costs are included in the Contract Sum and that the allowance covers only the net cost to the Subcontractor.

Unanticipated price escalations in construction materials after the contract is executed have caused concern to owners and contractors. If the Owner, Construction Manager, and Architect are concerned about facing such price escalations in certain materials, they should identify those materials prior to the bid and provide for them in the bidding requirements as allowances.

Renovation projects often require implementation of contractual techniques to manage unknown conditions. Quantity allowances may be established for such conditions, coupled with unit pricing mechanisms that will be triggered in the face of greater or lesser quantities of Work than those anticipated by the quantity allowance. If the potential range of variation is large, the Owner may wish to include overhead and profit in the quantity allowance, but not in the unit price. Since the quantity allowance is an assumed amount of Work in the Contract Sum and the unit price is the amount proposed by the Contractor to perform a greater or lesser increment of Work, the fair overhead and profit percentage for greater quantities is usually different from the percentage applied to lesser quantities of Work. If such conditions exist on a Project, Section 3.8.2.2 may be modified accordingly.

§ 3.10.1 The Contractor's construction schedule is a management, planning, and control tool. The Construction Manager will use each Contractor's construction schedule to develop the Project schedule. If a Claim for extension of the Contract Time is submitted by the Contractor under Section 15.1.6, the Initial Decision Maker (IDM), who is often the Architect, will use the current schedule to evaluate whether the date that the Contractor's Work is to be substantially completed, or the date of Substantial Completion of the Project Work, is impacted, supported by the analysis provided by the Contractor.

Section 3.10.1 of AIA Document A232–2019 has been developed to provide general requirements for scheduling on most projects. However, complex or time sensitive projects may need to address scheduling in greater detail. It may be necessary to require a schedule able to describe the logical links among activities, float times, the critical path, and manpower loading. A detailed description of, and requirements for, the Contractor's construction and submittal schedules, including the process for its preparation, required development, and element details; float ownership; delay treatment; and schedule reporting and updating, is often specified in the General Requirements (Division 1 of the Specifications).

Model Language regarding documentation of time related Claims is discussed under Section 15.1.6.

§ 3.11 Documents and Samples at the Site

The documents required here constitute "a record of the Work as constructed" and their function is limited to showing changes made in the Work during construction. Specific detailed requirements for recording as-constructed conditions, especially for mechanical and electrical portions of the Work, should be specified in the General Requirements (Division 1 of the Specifications), or in the appropriate section of the Specifications.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.5 Detailed procedures for handling Shop Drawings, Product Data and Samples should be specified in the General Requirements (Division 1 of the Specifications).

§ 3.12.11 Reviewing multiple resubmittals can be a serious drain on the Architect's time and other resources. If the Architect is entitled to an adjustment in compensation for such services under the Owner-Architect agreement, Section 4.2.3 of AIA Document B132–2019, language such as that shown below may be appropriate.

Add Section 3.12.11 to Section 3.12:

Model Language:

§ 3.12.11 The Architect's review of Contractor's submittals will be limited to examination of an initial submittal and _____ (_____) resubmittals. The Contractor shall reimburse the Owner for amounts paid to the Architect for evaluation of additional resubmittals.

§ 3.13 Use of Site

Detailed requirements may need to be specified in the General Requirements (Division 1 of the Specifications) if an existing building will remain occupied or require access by the public during construction. Additionally, information regarding site access such as points of ingress and egress, as

well as allowable working hours, may be specified in the General Requirements.

§ 3.14. Cutting and Patching

§ 3.14.1 Special requirements for Work involving renovation, remodeling, historic restoration, or other detailed requirements should be specified in Divisions 1–49 of the Specifications.

§ 3.15 Cleaning Up

§ 3.15.1 Detailed requirements for cleaning should be specified in the General Requirements (Division 1 of the Specifications).

§ 3.18 Indemnification

In some jurisdictions, statutory requirements may modify this indemnification section or void it completely. The Owner should seek the advice of legal counsel for modifications to this section.

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 4.1 General

Some clients, especially public authorities, may elect to engage the Construction Manager and Architect for limited contract administration services or elect to omit contract administrative services from the Construction Manager or Architect's scope of services altogether. If this occurs, the Construction Manager and Architect's services in the General Conditions should be reviewed carefully and correlated with the provisions of the Agreements between the Owner and Architect and the Owner and Construction Manager. The parties should be especially alert to the possible delegation of the Construction Manager and Architect's duties or authority to someone else, and should specify under this section who will assume each function normally assigned to the Construction Manager and Architect. Other provisions of the General Conditions may have to be modified as well. The parties should be aware that changes to the Construction Manager or Architect's services in AIA Document A232–2019 may conflict with the services described in AIA Documents B132–2019 and C132™–2019. Pursuant to the terms of those Agreements, the terms of the A232 are only applicable to the Architect's and Construction Manager's services to the extent they are consistent with, or amended in, the B132 and C132.

If the Construction Manager or Architect's construction administration duties vary from those identified in A232–2019, use the following model language to identify the variations.

Model Language:

§ 4.1.1.1 The Architect's duties, responsibilities and limitations of authority are modified as follows:

(List or attach as an exhibit.)

§ 4.1.2.1 The Construction Manager's duties, responsibilities and limitations of authority are modified as follows:

(List or attach as an exhibit.)

§ 4.2.2.1 AIA Document B132–2019 addresses instances when the Architect makes site visits as a result of Contractor actions. The following language may be added for consistency between Section 4.2.2 of AIA Document A232–2019 and Section 4.2.3 of B132–2019.

Add Section 4.2.2.1 to Section 4.2.2:

Model Language:

§ 4.2.2.1 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

§ 4.2.10 and § 4.2.11 AIA Document A232–2019 requires the Construction Manager and Architect to perform submittal review in accordance with a submittal schedule that is approved by the Construction Manager and the Architect, and that may stipulate the turn-around time for the Construction Manager and Architect's review of submittals. In the absence of an approved submittal schedule, or in anticipation of receiving it, the parties may wish to stipulate a minimum review period for submittals in conformance with standard office procedures.

The following language may be added as Sections 4.2.10.1 and 4.2.11.1:

Model Language:

§ 4.2.10.1 In no case will the Construction Manager’s review period on any submittal be less than _____ () days after receipt of the submittal from the Contractor.

§ 4.2.11.1 In no case will the Architect’s review period on any submittal be less than _____ () days after receipt of the submittal from the Contractor.

§ 4.2.17 Administration of the Contract

§ 4.2.17 This model language advises the Construction Manager and Contractor in advance that a Project Representative will be employed for the Project by the Architect. In addition, a copy of AIA Document B207™–2017, which enumerates the duties, responsibilities and limitations of authority of the Project Representative, should be attached in an exhibit to be incorporated into the Contract Documents.

Delete Section 4.2.17 and substitute the following:

Model Language:

§ 4.2.17 A Project Representative will be employed at the site by the Architect. The Project Representative’s duties, responsibilities and limitations of authority are as set forth in AIA Document B207™–2017, Standard Form of Architect’s Services: On-Site Project Representation; a copy of which is attached in an exhibit to be incorporated into the Contract Documents.

§ 4.2.21 On many projects, especially publicly bid projects, the Owner may wish to expand upon the A232–2019 language regarding review and response to requests for information. AIA Document B132–2019 stipulates the situations where the review of requests for information is considered an Additional Service. Requirements in A232 should be coordinated with Section 4.2.2 of B132–2019.

The following language may be added as Section 4.2.21.1. Note that only one of the “or” clauses relating to the type of form used for requests for information should be included:

Model Language:

§ 4.2.21.1 Contractor’s requests for information shall be prepared and submitted in accordance with Division 1 “General Requirements” sections [on the form included in the Contract Documents [OR] on AIA Document G716™–2004.] The Architect will return without action requests for information that do not conform to requirements of the Contract Documents.

ARTICLE 5 SUBCONTRACTORS

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 If any Subcontractors are to be identified and selected prior to execution or award of the Contract, this should be set forth in the bidding requirements (e.g., AIA Document A701–1997, Instructions to Bidders). If this procedure is followed, it will be necessary to modify Section 5.2 to conform to the stipulations in the bidding requirements. This should be done by a supplement to Section 5.2.1. If the Owner wishes to take sub-bids on certain parts of the Work or to require the Contractor to employ certain Subcontractors or material suppliers of the Owner’s choosing, this should be explained in detail in the Instructions to Bidders.

A232 Section 5.2 requires the Contractor to submit a list of Subcontractors through the Construction Manager “as soon as practicable after award of the Contract.” If the Owner wishes certain Subcontractors to be identified more quickly, a list of those Subcontractors and their submittal dates should be included in the Supplementary Conditions.

If the Owner, through the Construction Manager and Architect, wishes to review certain proposed manufacturers or fabricators, this should be explained in the Supplementary Conditions. It is recommended that not more than 60 days be allowed; shorter times may be practicable on smaller projects.

The following language may be added as Section 5.2.5.:

Model Language:

§ 5.2.5 Not later than _____ () days after the date of commencement of the Work, the Contractor shall furnish in writing to the Owner, through the Construction Manager and Architect, the names of persons or entities proposed as manufacturers or fabricators for certain products, equipment and systems identified in the General Requirements (Division 1 of the Specifications) and, where applicable, the name of the installing Subcontractor.

If, however, the Owner wishes to have an opportunity to both review and reject certain proposed manufacturers or fabricators, then this version of Section 5.2.5 should be added to Section 5.2.

Model Language:

§ 5.2.5 MANUFACTURERS AND FABRICATORS

§ 5.2.5.1 Not later than _____ () days after the date of commencement of the Work, the Contractor shall furnish in writing to the Owner, through the Construction Manager and Architect, the names of persons or entities proposed as manufacturers or fabricators for certain products, equipment and systems identified in the General Requirements (Division 1 of the Specifications) and, where applicable, the name of the installing Subcontractor. The Construction Manager may reply in writing to the Contractor within 14 days stating 1) whether the Owner, the Construction Manager, or the Architect has reasonable objection to any such proposed person or entity or 2) that the Construction Manager or Architect requires additional time to review. Failure of the Construction Manager, Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.5.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.5.3 If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. If the proposed but rejected manufacturer or fabricator was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute manufacturer's or fabricator's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.5.4 The Contractor shall not substitute a person or entity previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.2 If the Owner performs construction or operations with the Owner's own forces or Separate Contractors, including persons or entities under separate contracts not administered by the Construction Manager, Section 6.1.2 of the General Conditions requires that the Owner coordinate this construction with the Work of the Contractor. The details of this coordination should be set forth in the General Requirements (Division 1 of the Specifications), including the enumeration of those portions of the Work to be provided under this article, and identification of the Owner's own forces and Separate Contractors, when known.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

This suggested modification of Section 7.1 applies only to contracts where the parties select a stipulated sum amount to be the basis of payment in AIA Document A132™–2019. They do not apply to contracts where the parties select Cost of the Work plus a fee as the basis of payment in A132–2019, through the use of Exhibit B.

For changes in the Work, overhead and profit may be stated separately or combined but, in either case, the Change Order should distinguish among:

- a) Amounts paid to the Contractor for Work performed by the Contractor with that Contractor's own forces and amounts paid for materials purchased directly by the Contractor (not through a Subcontractor).
- b) Amounts paid to the Contractor and Subcontractor for Work performed by the Subcontractor with that Subcontractor's own forces and amounts paid for materials purchased directly by that Subcontractor (not through a Sub-subcontractor).
- c) Amounts paid to the Contractor, Subcontractor and Sub-subcontractor for Work performed by the Sub-subcontractor with that Sub-subcontractor's own forces and amounts paid for materials purchased by that Sub-subcontractor.

On some projects it may be desirable to add more specific information concerning items to be considered as part of "cost" as opposed to "overhead," "profit," or "fee." Items that might be defined as one or the other may include costs for preparing Shop Drawings, reserves for future service liability, engineering and estimating costs, added costs for bonds and insurance, and travel and transportation expenses.

Add the following Section 7.1.4 to Section 7.1:

Model Language:

§ 7.1.4 The combined overhead and profit included in the total cost to the Owner for a change in the Work shall be based on the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, _____ percent (___%) of the cost.
- .2 For the Contractor, for Work performed by the Contractor's Subcontractors, _____ percent (___%) of the amount due the Subcontractors.
- .3 For each Subcontractor involved, for Work performed by that Subcontractor's own forces, _____ percent (___%) of the cost.
- .4 For each Subcontractor involved, for Work performed by the Subcontractor's Sub-subcontractors, _____ percent (___%) of the amount due the Sub-subcontractor.
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.4.

§ 7.1.5 In order to facilitate checking of proposals for increases or decreases to the contract sum, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$_____ be approved without such itemization.

§ 7.2 Change Orders

A232 requires that Change Orders be prepared by the Construction Manager. In some instances, however, it may be more expedient if the Contractor prepares some or all of a Change Order. While changes to the Architect's Instruments of Service must be prepared by the Architect in accordance with the Owner-Architect Agreement, the Change Order form may be prepared by the Contractor for review and approval by the Owner, Construction Manager, and Architect. Appropriate changes to B132-2019 and C132-2019 may be necessary for consistency when incorporating the following change.

Delete Section 7.2 and substitute the following:

Model Language:

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument signed by the Owner, Contractor, Construction Manager, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Except as otherwise provided in the Contract Documents, the Contractor shall prepare the Change Order form, which may include supporting materials prepared by the Architect or Construction Manager, for review and approval by the Owner, Construction Manager, and Architect.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.4 If there is a requirement or preference to measure time related to the Contract in actual working days rather than calendar days, this section should be modified.

Delete Section 8.1.4 and substitute the following:

Model Language:

§ 8.1.4 The term “day” as used in the Contract Documents shall mean working day, excluding weekends and legal holidays.

Occasionally an Owner will want no Work performed on certain days when Work might normally be carried out (i.e., special religious holidays). In addition to the General Requirements (Division 1 of the Specifications), it would be appropriate to list these in a supplement to this section.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.2 Schedule of Values

Requirements concerning the format and data required for the schedule of values should be stated in the General Requirements (Division 1 of the Specifications), rather than by inserting language here to modify the General Conditions. A frequent requirement is that the schedule must be prepared in such a manner that each major item of Work and each subcontracted item of Work is shown in such detail as the Construction Manager and Architect may require on AIA Document G703™–1992, Continuation Sheet for AIA Document G732™–2019, Application and Certificate for Payment, Construction Manager as Adviser Edition.

§ 9.3 Applications for Payment

§ 9.3.1 Detailed requirements concerning the format (and notarization, if required) of the Contractor's Application for Payment should be specified in the General Requirements (Division 1 of the Specifications) rather than by inserting language here to modify the General Conditions. A frequent requirement is the use of AIA Document G732–2019, Application and Certificate for Payment, Construction Manager as Adviser Edition, and AIA Document G703–1992, Continuation Sheet for G732–2009, Application and Certificate for Payment, Construction Manager as Adviser Edition. Public authorities often have their own forms. The Construction Manager or Architect may reject unauthorized facsimiles of AIA documents G732 and G703 if the following language is used.

Add the following sentence to Section 9.3.1:

Model Language:

The form of Application for Payment, duly notarized, shall be a current authorized edition of AIA Document G732™–2019, Application and Certificate for Payment, Construction Manager as Adviser Edition, supported by a current authorized edition of AIA Document G703™–1992, Continuation Sheet.

§ 9.3.2 If stored materials and equipment, either on or off the site, will not be paid for until incorporated in the Work, this section needs to be modified appropriately. This should also be reflected in the payment provisions of A132–2019, Standard Form of Agreement between the Owner and Contractor, Construction Manager as Adviser Edition, which must likewise be modified to omit reference to stored materials. The parties will also need to address ownership of, and risk of loss and insurance for, those materials and equipment.

§ 9.8 Substantial Completion

§ 9.8.1 If designated portions of the Work are to be accepted separately by the Owner, clearly define the limits of the Work to be accepted separately and include other appropriate information in the General Requirements (Division 1 of the Specifications).

§ 9.8.3.1 Multiple reinspections can be a serious drain on the Architect's time and other resources. If the Architect is entitled to an adjustment in compensation for such services under Section 4.2.3.3 of AIA Document B132–2019, the following language may be appropriate.

Add the following Section 9.8.3.1 to Section 9.8.3:

Model Language:

§ 9.8.3.1 The Architect will perform no more than _____ () inspections to determine whether the Work or a designated portion thereof is substantially complete in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

§ 9.10 Final Completion and Final Payment

§ 9.10.1.1 Multiple reinspections can be a serious drain on the Architect's time and other resources. If the Architect is entitled to an adjustment in compensation for such services under Section 4.2.3.4 of AIA Document B132–2019, the following language may be appropriate.

Add the following Section 9.10.1.1 to Section 9.10.1:

Model Language:

§ 9.10.1.1 The Architect will perform no more than _____ () inspections to determine whether the Work or a designated portion thereof has attained Final Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.2 Safety of Persons and Property

§ 10.2.4 It may be prudent for the Contractor to inform the Owner of known potential hazards on the site, or when explosives or unusual methods may be used. The Owner and Contractor may be held liable to third parties and may therefore wish to take precautions.

Add the following Section 10.2.4.1 to Section 10.2.4:

Model Language:

§ 10.2.4.1 When use or storage of explosives, or other hazardous materials, substances or equipment, or unusual methods, are necessary for execution of the Work, the Contractor shall give the Owner and Construction Manager reasonable advance notice.

§ 10.3 Hazardous Materials

Note that AIA Document A232–2019 allows an Owner who has knowledge of the existence of materials of the type discussed in Section 10.3.1 to disclose the existence of those materials in the Contract Documents and to require the Contractor to remove or take other action regarding them. If the Owner has made such disclosure, the Contractor is not entitled to stop the Work as described in Section 10.3.1 or to require the Owner to take the actions described in Section 10.3.2.

Disclosure of the existence and location of the materials should be made in Division 1—General Requirements—and, if appropriate, on the Drawings. In addition, supplementary language may be added requiring the Contractor to comply with all applicable statutes in working with such materials including the environmental cleanup of materials that are accidentally disturbed or released into the environment. Coordinate with Article 11 and the 2019 insurance exhibit regarding insurance for special hazards or pollutants.

As the Construction Manager and Architect are unlikely to be experts in the removal or other treatment of hazardous materials, it may be appropriate to require the Contractor to engage a licensed laboratory and qualified consultants and subcontractors to perform services mirroring those described in the first four sentences of Section 10.3.2 and to certify that the material or substance has been removed or rendered harmless and any necessary environmental cleanup performed.

ARTICLE 11 INSURANCE AND BONDS

In A232-2019, the majority of negotiated insurance provisions have been included in an exhibit to the A132-2019 Owner-Contractor Agreement. This new exhibit provides for required and optional insurance coverages that the Project participants may tailor to the specific needs of the Project.

Sections regarding the waiver of subrogation and the Owner's obligation to hold insurance proceeds as a fiduciary to the party experiencing a loss remain in AIA Document A232–2019, along with other provisions dealing with failure to purchase, or cancellation of, required insurance coverage.

Typically, the Construction Manager and Architect are not qualified as insurance counselors, and the architect's professional liability insurance may not cover providing insurance advice. For that reason, the Construction Manager and Architect are cautioned not to make recommendations about insurance or approve insurance certificates or policies. It is in the best interests of all parties that insurance matters be placed in the hands of the Owner's insurance counselor. The Owner's insurance counselor must review the Contractor's submittals regarding insurance to determine that the required coverages are in place.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.2 Correction of Work

§ 12.2.2 Note that the time limit of one year within which the Contractor is obliged to correct the Work may be modified by special warranties required by the Contract Documents. This one-year time limit should not be construed as a limitation of the Contractor's warranty under Section 3.5.1.

Section 3.6.6.5 of AIA Document B132–2019 provides for a meeting to be held with the Owner, Owner's Designated Representative, the Construction Manager and the Architect prior to the expiration of one year from the date of Substantial Completion to review facility operations and performance and to make appropriate recommendations. It may be desirable to require the Contractor to attend this meeting, as the recommendations from this meeting may form the basis for the written notice required by Section 12.2.2.1 of AIA Document A232–2019 of Work that is not in accordance with the Contract Documents.

Add the following Section 12.2.2.4 to Section 12.2.2:

Model Language:

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one year from the date of Substantial Completion, the Architect and Construction Manager will conduct, and the Contractor shall attend, a meeting with the Owner to review the facility operations and performance.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.6 Non-Discrimination and Affirmative Action.

The Construction Manager and Architect must be alert to provisions of local non-discrimination and affirmative action statutes in force at the Project location. If a supplementary condition is required, it should be added as a new Section 13.6, or in the A132 -2019 Owner-Contractor Agreement.

§ 13.7 Confidential Information

In many instances, the Owner or Contractor may provide the other party with confidential information regarding its business or processes. While terms regarding confidentiality are often included in a separate agreement, the parties may wish to include terms regarding confidential information in the General Conditions. Generally, confidentiality provisions are best limited to information that is specifically designated as confidential. This avoids confusion regarding which information is confidential and which may be disclosed.

Add the following Section 13.7:

Model Language:

§ 13.7 If the Owner or Contractor receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, including its employees, or (2) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. However, the party receiving "confidential" or "business proprietary" information may disclose such information, after seven (7) days' Notice to the party providing the confidential or business proprietary information, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by arbitrator(s) order. Notice shall be provided, and deemed to have been duly served, in accordance with § 1.6 of A232-2019.

§ 13.8 Moisture Control and Mold Mitigation

If project conditions warrant special mold mitigation measures, a Division 1 section should be edited or created to address special procedures and protocols that must be performed. A Moisture Control and Mold Mitigation protocol should be written and included in the Contract Documents, clearly outlining the roles and responsibilities of the Owner and Contractor before, during and after construction.

Pre-construction activities at an existing building may include the Owner providing air monitoring and inspection services to determine if mold exists before the Work is commenced at the site, and remediation of the mold.

Mold coverage on Contractor's Commercial General Liability or Pollution Liability policy is available, but is generally difficult to obtain. If this type of insurance is desired because of project conditions, the Owner should seek the advice of insurance counsel and appropriate modifications should be made to the 2019 insurance exhibit for A132.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

See discussion above in Part I, Article 7 regarding inclusion of a Termination Fee in the A132-2019 Owner-Contractor Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1.6 Claims for Additional Time

Users will note the use of both "substantially complete" and "Substantial Completion" in A232-2019. Although the Construction Manager as Adviser family of documents assumes there will be more than one Contractor on the Project, each of the Contractors executes a single A132-2019 Owner-Contractor Agreement which includes A232-2019 as the General Conditions. As explained above in Section I, Article 4 Contract Sum, Section 4.5 Liquidated Damages, there is a single Date of Substantial Completion for the entire Project, based upon the schedule developed by the CMA that includes the Work of all of the Contractors. This single date of Substantial Completion is provided in each A132 in section 3.3, and represents the traditional contractual date that the project has reached the point that the Owner can "occupy or utilize the Work for its intended use."

Also provided in Section 3.4 of each A132 Owner-Contractor agreement, and on the CMA's project schedule, is the individual Contractor's date to reach the point that its Work is *substantially complete*. When that point is reached, that particular Contractor's work is near completion, but the Project may not be ready for Owner occupancy and use. Examples of this may be completion of structural steel or a curtain wall system. Based upon the single Contractor's scope of work, its inter-relationships with the other Contractors' work, etc, the individual Contractor's work may be substantially complete earlier or at the same time as the Project date of Substantial Completion. When an individual Contractor's Work becomes substantially complete, the Work has reached the point that the Architect and CMA can review the Work for a punch list, the Contractor can begin to submit close out documentation, and (partial) release of retention may occur. Each Contractor likely will have the date specified in Section 3.4 of A132-2019 to have its Work become substantially complete,

Any Contractor may file a claim for a time extension if something impacts its Work and schedule, potentially extending the Contract Time. The architect and CMA will evaluate the Contractor's claim and may approve a time extension for a valid claim. A time extension for one Contractor may or may not create a time extension claim for other Contractors. Only the Contractor making the claim would receive a time extension change order. The time extension and alteration of the Contractor's work then will be shown on a Project Schedule update issued by the CMA. The CMA also may evaluate the change in the schedule, order of work, work relationships, etc. with the other Contractors; however, it will be up to each of the other Contractors to evaluate the impact of the schedule change on their own Work and make individual time impact claims. These individual claims then will be evaluated by the CMA and architect, but a time extension change order for contractor A will not automatically create or produce a time extension for the other Contractors. A time extension for a single Contractor also may impact the project's date of Substantial Completion. If this occurs, good practice is to create a change order for each Contractor to adjust their contractual date of Substantial Completion. This keeps the single, consistent Date of Substantial Completion for all Contractors and in all Owner-Contractor agreements.

On projects where time is critical, or where delays are likely to occur, the Owner may require added protection. In the language suggested below, Section 15.1.6.3 strengthens the documentation requirements for Claims for additional time, and Section 15.1.6.4 requires the Contractor to

demonstrate that the delay was on the critical path. It is advisable to further describe the scheduling, documentation, and submittal timing, required of the Contractor in Division 1 of the Specifications.

Add the following Sections 15.1.6.3 and 15.1.6.4 to Section 15.1.6:

Model Language:

§ 15.1.6.3 Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work, and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

§ 15.1.6.4 The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.

Additionally, the parties may want more specific detail or limitations for weather related delays as additional guidance to help evaluate a Contractor's claim for a time extension related to weather.

Modify the language in Section § 15.1.6.2 to read:

Model Language:

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, the Claim shall be documented by data substantiating that the weather conditions upon which the Claim is based (1) were abnormal when compared to the previous (____)-year period, during the same time frame and at the location of the Work, (2) could not have been reasonably anticipated, and (3) had an adverse effect on the date of Substantial Completion of the Work of all Contractors for the Project or the date that the Contractor's Work is to be substantially complete as set forth in A132-2019.

§ 15.1.7 Waiver of Claims for Consequential Damages

Under this section, the Owner and Contractor waive consequential damages arising out of the Contract for Construction. Generally, a rule of law known as the economic loss doctrine would bar independent tort claims relating to the Contract. In some states, however, the economic loss doctrine has been weakened or discarded. In that situation the Construction Manager and Architect, against whom the Contractor does not waive consequential damages, would be exposed to tort claims by the Contractor for such damages. Where the law of such a state applies, the following language, and compliance with the stated conditions, may help protect the Architect and Construction Manager from claims by the Contractor for consequential damages. If the language suggested below is included in the Owner-Contractor Agreement, consider making the waiver reciprocal by adding similar language to the B132-2019 Owner-Architect Agreement and C132-2019 Owner-Construction Manager Agreement.

Add the following sentence to Section 15.1.7:

Model Language:

If, before expiration of 30 days from the date of execution for this Agreement, the Owner obtains by separate agreement and furnishes to the Contractor a similar mutual waiver of all claims from the Construction Manager and Architect against the Contractor for consequential damages which the Construction Manager or Architect may incur as a result of any act or omission of the Owner or Contractor, then the waiver of consequential damages by the Owner and Contractor contained in this Section 15.1.7 shall be applicable to claims by the Contractor against the Construction Manager and Architect.

§ 15.3 Meet and Confer as Condition Precedent

While good business practice dictates that the parties will meet and confer in an effort to resolve disputes prior to engaging in mediation and binding dispute resolution, many parties find it useful to include this step as a contractual obligation and condition precedent to mediation and binding dispute resolution.

Before Section 15.3, Mediation, add the below new Section 15.3 and renumber the paragraphs as necessary:

Model Language

§ 15.3 Meet and Confer

§ 15.3.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to a meet and confer session as a condition precedent to mediation.

§ 15.3.2 The meet and confer session shall be attended by members of the Owner and Contractor's senior management, who shall have full authority to bind their respective party with respect to the Claim, dispute or other matter in question. The meet and confer session shall take place within _____ () days after a request by either party, unless the parties mutually agree otherwise.

§ 15.3.3 If the parties reach a mutually acceptable resolution, then they shall prepare appropriate documentation memorializing the resolution. If the parties cannot reach a mutually acceptable resolution, they shall proceed to mediation in accordance with Section 15.4.

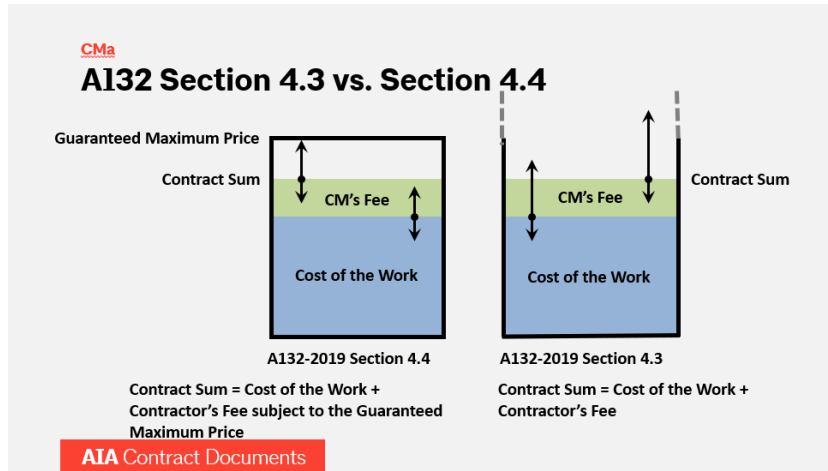
III. AMENDMENTS TO AIA A232-2019 GENERAL CONDITIONS FOR AN AGREEMENT WHERE THE CONTRACT SUM IS BASED ON THE COST OF THE WORK WITH OR WITHOUT A GUARANTEED MAXIMUM PRICE

Historically, the AIA has recommended that contracting parties use the A232 General Conditions, whether the parties chose stipulated sum or cost of the work as the payment method in A132-2019. During the process of updating the A102-2017 and A103-2017 Design-Bid-Build Cost of the Work Agreements, and updating the 2019 Construction Manager as Constructor Agreements, the AIA performed a detailed analysis of the interaction between, and coordination of, an agreement where the contract sum is based on the Cost of the Work, with or without a Guaranteed Maximum Price, and the A201-2017 General Conditions. Through this exercise, the AIA determined that under certain circumstances, edits could be made to the standard A201 text that would clarify or more closely align the cost of the work concepts with A201 language. These edits are also applicable to A232-2019. The edits, together with an explanation of the rationale for the edits, are set forth below. If you chose to make these edits, **we recommend that you consider incorporating all of the edits into A232 based upon the needs of the project.** Notwithstanding, we believe an unedited A232 General Conditions continues to work in the context of the A132-2019 Owner-Construction Manager as Adviser Agreement.

AMENDMENTS TO GENERAL CONDITIONS AND SUPPLEMENTARY CONDITIONS

A. General Edits

On a Project where the Contract Sum is based on the Cost of the Work, a Contractor will be reimbursed for its costs reasonably incurred in the proper performance of the Work as described in A132-2019, Exhibit B, Determination of the Cost of the Work. In A132-2019, the parties select whether the Cost of the Work will be with a Guaranteed Maximum Price (Section 4.4) or Cost of the Work without a Guaranteed Maximum Price (Section 4.3). The fundamental difference between Section 4.3 and Section 4.4 is whether there is a cap on the amount that the Contractor will be paid for performing the Work. Under Section 4.4, there is such a cap, also known as the Guaranteed Maximum Price ("GMP"). The Contractor will be paid for its costs reasonably incurred in the proper performance of the Work, plus its Fee (which typically includes the Contractor's home office overhead and profit), up to the GMP. If the Cost of the Work plus the Fee exceeds the GMP, the Contractor is entirely at risk and will not be reimbursed by the Owner for those additional costs. Under Section 4.3, there is no such cap. The Contractor will be paid its costs reasonably incurred in performing the Work, plus its Fee; and there is no limit to the Owner's liability for those costs.



1. A132-2019, Section 4.4 (Cost of the Work with a Guaranteed Maximum Price)

Like with a conventional stipulated sum agreement (A101), in which the Contract Sum may only be adjusted by an additive or deductive change order, under A132, Section 4.4, the GMP may only be adjusted by a change order. As a result, as indicated in the middle column of **Table 1** below, the user should replace the phrase “Contract Sum” with the phrase “Guaranteed Maximum Price.” One exception to this general rule occurs in Section 7.4, in which the Architect has the authority to order minor changes in the work. Minor changes are defined as those which do not increase the Contract Sum or Contract Time. In this instance, the first reference to “Contract Sum” **should remain** “Contract Sum” rather than changing to “Guaranteed Maximum Price” because the “Contract Sum” is defined in the agreement as the cost of the work plus the Contractor’s Fee.

In a cost-plus-fee contract, the Contractor’s Fee is not necessarily tied only to overhead and profit. The Contractor’s Fee may be a fixed fee or a percentage of the Cost of the Work, or it may be based on another method. Therefore, the value of any adjustment to the Guaranteed Maximum Price is a function of the cost of the item plus the Contractor’s Fee allocated to the added or deleted Work (which will normally include overhead and profit, and may include other variables). Because of these distinctions, as indicated in the middle column of **Table 1** below, the user should replace references to “overhead and profit” with “the Contractor’s Fee.”

2. A132-2019, Section 4.3 (Cost of the Work without a Guaranteed Maximum Price)

Although there is no limit on the amount that a Contractor will be paid for performing Work under an A132, Section 4.3, the document includes a provision for a Control Estimate. The Control Estimate is used in lieu of a schedule of values, which is used as part of a detailed system of cost control under a stipulated sum or Cost of the Work with GMP agreement. The Control Estimate is updated and submitted with each successive application for payment and allows the Owner to determine if the costs that the Contractor has incurred during the previous month have been consistent with those that were previously estimated. It allows the Owner to make appropriate adjustments to control costs and take advantage of savings opportunities throughout the construction period. Because the Control Estimate is merely a tracking number, changes ordered in the Work will not require a formal adjustment (i.e., Change Order) to the Control Estimate. However, those changes must be reflected in the periodic updates to the Control Estimate required by the Agreement. Therefore, under A132, Section 4.3, Change Orders are only used to adjust the Project scope, Contract Time, or both. Change Orders are not used to adjust the Contract Sum. Because of these distinctions, as indicated in the right column of **Table 1** below, the user should remove references to adjustment of the “Contract Sum,” acknowledge the Contractor’s obligation to update the Control Estimate in situations where the Contractor is entitled to increased costs, and replace and modify references to the “schedule of values” with the “Control Estimate,” as indicated.

Table 1

A232-2019 Section Reference	Modifications to A232--2019 for use with A132-2019, Section 4.4	Modifications to A232-2019 for use with A132-2019, Section 4.3
Evidence of the Owner's Financial Arrangements 2.2.2	<p>Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum <u>Guaranteed Maximum Price</u>. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum <u>Guaranteed Maximum Price</u> under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the <u>Guaranteed Maximum Price shall be increased to reflect the Contractor's reasonable costs of shutdown, delay, and start-up, plus interest as provided in the Contract Documents.</u></p>	No change from A232-2019

A232-2019 Section Reference	Modifications to A232--2019 for use with A132-2019, Section 4.4	Modifications to A232-2019 for use with A132-2019, Section 4.3
<p>Concealed or Unknown Conditions 3.7.4</p>	<p>If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum <u>Guaranteed Maximum Price</u> or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.</p>	<p>If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. <u>The Contractor shall update the Control Estimate, in accordance with the requirements of the Contract Documents, to reflect the increase or decrease, if any, in the Contract Sum resulting from the change.</u> If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.</p>

<p>A232-2019 Section Reference</p>	<p>Modifications to A232--2019 for use with A132-2019, Section 4.4</p>	<p>Modifications to A232-2019 for use with A132-2019, Section 4.3</p>
<p>Concealed or Unknown Conditions 3.7.5</p>	<p>If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum <u>Guaranteed Maximum Price</u> and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.</p>	<p>If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.</p>

A232-2019 Section Reference	Modifications to A232--2019 for use with A132-2019, Section 4.4	Modifications to A232-2019 for use with A132-2019, Section 4.3
<p>Allowances 3.8</p>	<p>3.8.1. The Contractor shall include in the Contract Sum Guaranteed Maximum Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.</p> <p>3.8.2. Unless otherwise provided in the Contract Documents,</p> <ul style="list-style-type: none"> .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts; .2 Contractor’s costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum <u>Guaranteed Maximum Price</u> but not in the allowances; and .3 whenever costs are more than or less than allowances, the Contract Sum <u>Guaranteed Maximum Price</u> shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor’s costs under Section 3.8.2.2. <p>3.8.3. No change from A232-2019.</p>	<p>Delete Section 3.8 in its entirety and replace with the phrase “Intentionally omitted.”</p>

A232-2019 Section Reference	Modifications to A232--2019 for use with A132-2019, Section 4.4	Modifications to A232-2019 for use with A132-2019, Section 4.3
Award of Subcontracts and Other Contracts for Portions of the Work 5.2.3	If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum <u>Guaranteed Maximum Price</u> and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum <u>Guaranteed Maximum Price</u> or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.	If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and <u>Contract Time shall be increased or decreased</u> adjusted by the difference; if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. <u>The Contractor shall update the Control Estimate to reflect the increase or decrease, if any, in the Contract Sum resulting from the change.</u> However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.
Change Orders 7.2.1	A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following: .1 The change in the Work; .2 The amount of the adjustment, if any, in the Contract Sum <u>Guaranteed Maximum Price</u> ; and .3 The extent of the adjustment, if any, in the Contract Time.	A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following: .1 The change in the Work; <u>and</u> .2 The amount of the adjustment, if any, in the Contract Sum; and .3 The extent of the adjustment, if any, in the Contract Time. <u>Upon the issuance of a Change Order, the Contractor shall update the Control Estimate, in accordance with the requirements of the Contract Documents, to reflect the increase or decrease, if any, in the Contract Sum resulting from the change.</u>

A232-2019 Section Reference	Modifications to A232--2019 for use with A132-2019, Section 4.4	Modifications to A232-2019 for use with A132-2019, Section 4.3
Construction Change Directives 7.3.1	A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum <u>Guaranteed Maximum Price</u> or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum <u>Guaranteed Maximum Price</u> and Contract Time being adjusted accordingly.	A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum <u>and</u> Contract Time being adjusted accordingly.
Construction Change Directives 7.3.3	If the Construction Change Directive provides for an adjustment to the Contract Sum <u>Guaranteed Maximum Price</u> , the adjustment shall be based on one of the following methods: <ul style="list-style-type: none"> .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; .2 Unit prices stated in the Contract Documents or subsequently agreed upon; .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or .4 As provided in Section 7.3.4. 	Delete Section 7.3.3 in its entirety and replace with the phrase "Intentionally omitted."

A232-2019 Section Reference	Modifications to A232--2019 for use with A132-2019, Section 4.4	Modifications to A232-2019 for use with A132-2019, Section 4.3
<p>Construction Change Directives 7.3.4</p>	<p>If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum <u>Guaranteed Maximum Price</u>, the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum <u>Guaranteed Maximum Price</u>, an amount for overhead and profit <u>the Contractor's Fee</u> as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:</p> <ol style="list-style-type: none"> .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect; .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed; .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and .5 Costs of supervision and field office personnel directly attributable to the change. 	<p>Delete Section 7.3.4 in its entirety and replace with the phrase "Intentionally omitted."</p>

<p>A232-2019 Section Reference</p>	<p>Modifications to A232--2019 for use with A132-2019, Section 4.4</p>	<p>Modifications to A232-2019 for use with A132-2019, Section 4.3</p>
<p>Construction Change Directives 7.3.6</p>	<p>Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum <u>Guaranteed Maximum Price</u> or Contract Time.</p>	<p>Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.</p>
<p>Construction Change Directives 7.3.7</p>	<p>A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum <u>Guaranteed Maximum Price</u> and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.</p>	<p>A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.</p>
<p>Construction Change Directives 7.3.8</p>	<p>The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum <u>Guaranteed Maximum Price</u> shall be actual net cost, as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit <u>the Contractor's Fee</u> shall be figured on the basis of net increase, if any, with respect to that change.</p>	<p>Delete Section 7.3.8 in its entirety and replace with the phrase "Intentionally omitted."</p>

A232-2019 Section Reference	Modifications to A232--2019 for use with A132-2019, Section 4.4	Modifications to A232-2019 for use with A132-2019, Section 4.3
Construction Change Directives 7.3.9	Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum <u>Guaranteed Maximum Price</u> on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.	Delete Section 7.3.9 in its entirety and replace with the phrase “Intentionally omitted.”
Construction Change Directives 7.3.10	When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum <u>Guaranteed Maximum Price</u> and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.	When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

<p>A232-2019 Section Reference</p>	<p>Modifications to A232--2019 for use with A132-2019, Section 4.4</p>	<p>Modifications to A232-2019 for use with A132-2019, Section 4.3</p>
<p>Minor Changes in the Work 7.4</p>	<p>The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum <u>Guaranteed Maximum Price</u> or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum <u>Guaranteed Maximum Price</u> or Contract Time, the Contractor waives any adjustment to the Contract Sum <u>Guaranteed Maximum Price</u> or extension of the Contract Time.</p>	<p>No change from A232-2019.</p>
<p><u>Schedule of Values Or Control Estimate</u> 9.2</p>	<p><u>Schedule of Values</u> Where the Contract is based on a stipulated sum or <u>Guaranteed Maximum Price</u>, the Contractor shall submit a schedule of values to the Construction Manager before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work <u>Guaranteed Maximum Price as required by the Contract Documents</u>. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.</p>	<p><u>Schedule of Values Control Estimate</u> Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the <u>The Contractor shall submit a schedule of values allocating the entire anticipated Contract Sum, to the various portions of the Work a Control Estimate, as required by the Contract Documents</u>, to the Construction Manager before the first Application for Payment. The schedule of values <u>Control Estimate</u> shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. This schedule <u>Control Estimate</u>, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values <u>Control Estimate</u> shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.</p>

A232-2019 Section Reference	Modifications to A232--2019 for use with A132-2019, Section 4.4	Modifications to A232-2019 for use with A132-2019, Section 4.3
Applications for Payment 9.3.1	No changes from A201-2017.	At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values <u>Control Estimate</u> , if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.
Failure of Payment 9.7	If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum <u>Guaranteed Maximum Price</u> shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.	If the Construction Manager and Architect do not issue a Certificate for Payment or Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of Contractor shall be paid the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. <u>The Contractor shall update the Control Estimate, in accordance with the requirements of the Contract Documents, to reflect the increase, if any, in the Contract Sum resulting from the shutdown, delay and start-up.</u>

A232-2019 Section Reference	Modifications to A232--2019 for use with A132-2019, Section 4.4	Modifications to A232-2019 for use with A132-2019, Section 4.3
<p>Hazardous Materials and Substances 10.3.2</p>	<p>Upon receipt of the Contractor’s notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum <u>Guaranteed Maximum Price</u> shall be increased by the amount of the Contractor’s reasonable additional costs of shutdown, delay, and start-up.</p>	<p>Upon receipt of the Contractor’s notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of Contractor shall be paid the Contractor’s reasonable additional costs of shutdown, delay, and start-up. <u>The Contractor shall update the Control Estimate, in accordance with the requirements of the Contract Documents, to reflect the increase, if any, in the Contract Sum resulting from the shutdown, delay and start-up.</u></p>

A232-2019 Section Reference	Modifications to A232--2019 for use with A132-2019, Section 4.4	Modifications to A232-2019 for use with A132-2019, Section 4.3
<p>Owner's Insurance: Failure to Purchase Required Property Insurance 11.2.2</p>	<p>If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager. separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum <u>Guaranteed Maximum Price</u> and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.</p>	<p>If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. <u>The Contractor shall update the Control Estimate, in accordance with the requirements of the Contract Documents, to reflect the increase, if any, in the Contract Sum resulting from the delayed commencement of the Work and procurement of insurance.</u> If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.</p>

A232-2019 Section Reference	Modifications to A232--2019 for use with A132-2019, Section 4.4	Modifications to A232-2019 for use with A132-2019, Section 4.3
Owner's Insurance: Notice of Cancellation or Expiration of Owner's Required Property Insurance 11.2.3	Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum <u>Guaranteed Maximum Price</u> shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.	Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order . <u>The Contractor shall update the Control Estimate, in accordance with the requirements of the Contract Documents, to reflect the increase, if any, in the Contract Sum resulting from the shutdown, delay and start-up of the Work and procurement of insurance.</u> The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.
Acceptance of Nonconforming Work 12.3	If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum <u>Guaranteed Maximum Price</u> will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.	No change from A232-2019.

<p>A232-2019 Section Reference</p>	<p>Modifications to A232--2019 for use with A132-2019, Section 4.4</p>	<p>Modifications to A232-2019 for use with A132-2019, Section 4.3</p>
<p>Tests and Inspections 13.4.1</p>	<p>Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals <u>shall be considered a Cost of the Work</u>. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded <u>the Guaranteed Maximum Price is established</u>. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.</p>	<p>Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals <u>shall be considered a Cost of the Work</u>. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.</p>

<p>A232-2019 Section Reference</p>	<p>Modifications to A232--2019 for use with A132-2019, Section 4.4</p>	<p>Modifications to A232-2019 for use with A132-2019, Section 4.3</p>
<p>Tests and Inspections 13.4.2</p>	<p>If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense <u>a Cost of the Work and the Guaranteed Maximum Price shall be adjusted accordingly.</u></p>	<p>If Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense <u>a Cost of the Work.</u></p>
<p>Termination by the Contractor 14.1.3</p>	<p>If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit <u>the Contractor's Fee</u> on Work not executed, and costs incurred by reason of such termination.</p>	<p>If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit <u>the Contractor's Fee</u> on Work not executed, and costs incurred by reason of such termination.</p>

A232-2019 Section Reference	Modifications to A232--2019 for use with A132-2019, Section 4.4	Modifications to A232-2019 for use with A132-2019, Section 4.3
Rights and Remedies 14.3.2	<p>The Contract Sum <u>Guaranteed Maximum Price</u> and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum <u>Guaranteed Maximum Price</u> shall include profit. No adjustment shall be made to the extent</p> <ul style="list-style-type: none"> .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible <u>and which is not compensable as a Cost of the Work</u>; or .2 that an equitable adjustment is made or denied under another provision of the Contract. 	<p>The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by <u>The Contractor shall update the Control Estimate, in accordance with the requirements of the Contract Documents, to reflect the increase, if any, in the Contract Sum resulting from the suspension, delay, or interruption under Section 14.3.1.</u> Adjustment of the Contract Sum <u>Control Estimate</u> shall include profit. No adjustment shall be made to the extent:</p> <ul style="list-style-type: none"> .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible <u>and which is not compensable as a Cost of the Work</u>; or .2 that an equitable adjustment is made or denied under another provision of the Contract. <p><u>The Contract Time shall be adjusted for any increase caused by suspension, delay, or interruption under Section 14.3.1.</u></p>
Continuing Contract Performance (Claims) 15.1.4.2	<p>The Contract Sum <u>Guaranteed Maximum Price</u> and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.</p>	<p>The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. <u>The Contractor shall update the Control Estimate, in accordance with the requirements of the Contract Documents, to reflect the increase or decrease, if any, in the Contract Sum resulting from the decision.</u> The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.</p>

A232-2019 Section Reference	Modifications to A232--2019 for use with A132-2019, Section 4.4	Modifications to A232-2019 for use with A132-2019, Section 4.3
Claims for Additional Cost 15.1.5	If the Contractor wishes to make a Claim for an increase in the Contract Sum <u>Guaranteed Maximum Price</u> , notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.	§ 15.1.5 Claims for Additional <u>Disputed Costs</u> If the Contractor wishes to make a Claim for an increase in the Contract Sum <u>a disputed cost</u> , notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.
Initial Decision 15.2.5	The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum <u>Guaranteed Maximum Price</u> or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.	The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time <u>or the terms of any payment to be made to the Contractor or the Owner</u> , or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

B. The “Bent Nail” Principle

During the course of a Project, a Contractor may also incur certain remediation costs which may be payable to the Contractor as a Cost of the Work if (1) the costs are not caused by the failure of the Contractor to perform its obligations in accordance with the Contract Documents; and (2) the costs are not recoverable from one or more third parties. This is sometimes referred to as the “bent nail” principle.

The rationale for the recovery of these costs flows from a basic difference between a fixed price/stipulated sum agreement and a cost reimbursable agreement. In a stipulated sum agreement, upon completion of the work the Contractor is entitled to be paid the Contract Sum. What it cost the Contractor to perform the Work, including any necessary remedial work, is irrelevant. If the cost of performance is less than the Contract Sum, the Contractor makes money; if it is more than the Contract Sum, the Contractor loses money. So before submitting a fixed price/stipulated sum proposal, the Contractor usually prepares an estimate of all anticipated costs to perform all obligations under the Contract Documents and a mark-up for overhead and profit. The Contractor knows that no job ever goes exactly as planned, with all costs as estimated. There will always be a “bent nail” (Work that may have to be replaced) regardless of whether it hires the most experienced and competent Subcontractors and Suppliers to install the nails. Accordingly, the Contractor will normally add a “contingency” to the proposal (to become part of the fixed price or stipulated sum), knowing that it will have to correct or replace the bent nail if it is discovered. Thus, the Owner pays the Stipulated Sum, which includes the contingency, whether the contingency is needed or not. If a Contractor underestimates the contingency and there are more “bent nails” than expected, the Contractor will not be able to cover all the cost of corrective work as part of the Contract Sum without dipping into profits. Conversely, if the fixed price Contract Sum includes more contingency money than needed, the Contractor’s profit may increase on the Project (or the contingency funds will be used to cover other cost overruns the Contractor must absorb).

In an AIA cost reimbursable contract, the Contractor gets paid for its actual Cost of the Work (the costs necessarily incurred by the Contractor in the proper performance of the Work, as defined in the Contract Documents), plus it’s contractually established Fee. Total payments may be limited by a Guaranteed Maximum Price. The Cost of the Work may include costs to repair or correct damaged or nonconforming Work. In the AIA Contract Documents © there is no “contingency” included in the list of “Costs to be Reimbursed.” However, AIA cost reimbursable contracts allow the Contractor to be paid for the “Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.”

Table 2 contains edits to A232-2019 recommended to address the Contractor’s entitlement to payment for these “bent nail” costs under both A132-2019, Section 4.4, cost reimbursable agreement with a Guaranteed Maximum Price and A132-2019, Section 4.3, cost reimbursable agreement without a Guaranteed Maximum Price.

Table 2

A232-2019 Section Reference	Modifications to A232--2019 for use with A132-2019, Section 4.4	Modifications to A232-2019 for use with A132-2019, Section 4.3
<p>Owner's Right to Carry Out the Work 2.5</p>	<p>If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary <u>permissible under the Contract Documents</u> to reimburse the Owner for the reasonable <u>and allowable</u> cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.</p>	<p>If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary <u>permissible under the Contract Documents</u> to reimburse the Owner for the reasonable <u>and allowable</u> cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.</p>

<p>A232-2019 Section Reference</p>	<p>Modifications to A232--2019 for use with A132-2019, Section 4.4</p>	<p>Modifications to A232-2019 for use with A132-2019, Section 4.3</p>
<p>Review of Contract Documents and Field Conditions by Contractor 3.2.4</p>	<p>If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. <u>The Cost of the Work shall not include any costs attributable to the failure of the Contractor to fulfill its obligations under Sections 3.2.2 and 3.2.3.</u></p>	<p>If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. <u>The Cost of the Work shall not include any costs attributable to the failure of the Contractor to fulfill its obligations under Section 3.2.2 and 3.2.3.</u></p>
<p>Contractor's Construction and Submittal Schedules 3.10.2</p>	<p>The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Construction Manager's and Architect's approval. The Architect's and Construction Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in the Contract Sum <u>Guaranteed Maximum Price</u> or extension of Contract Time, based on the time required for review of submittals.</p>	<p>The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Construction Manager's and Architect's approval. The Architect's and Construction Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in the Contract Sum or extension of Contract Time, based on the time required for review of submittals.</p>

A232-2019 Section Reference	Modifications to A232--2019 for use with A132-2019, Section 4.4	Modifications to A232-2019 for use with A132-2019, Section 4.3
Uncovering of Work 12.1.2	If a portion of the Work has been covered that the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum <u>Guaranteed Maximum Price</u> and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense <u>not be a Cost of the Work and shall not result in a change in the Contract Time except as otherwise permitted in the Agreement.</u>	If a portion of the Work has been covered that the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum <u>extension of the Contract Time</u> as may be appropriate. <u>The Contractor shall update the Control Estimate, in accordance with the Contract Documents, to reflect the increase, if any, in the Contract Sum resulting from the cost of uncovering and correction of the Work.</u> If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense <u>not be a Cost of the Work and shall not result in a change in the Contract Time except as otherwise permitted in the Agreement.</u>
Correction of Work (Before Substantial Completion) 12.2.1	The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections; <u>and the cost of uncovering and replacement; and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense shall not be a Cost of the Work and shall not result in a change in the Contract Time unless otherwise permitted in the Agreement.</u> <u>If the cost of correcting such rejected Work is not a Cost of the Work, the Contractor shall compensate the Owner for the Construction Manager's and the Architect's services and expenses made necessary thereby.</u>	The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections; <u>and the cost of uncovering and replacement; and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense shall not be a Cost of the Work and shall not result in a change in the Contract Time unless otherwise permitted in the Agreement.</u> <u>If the cost of correcting such rejected Work is not a Cost of the Work, the Contractor shall compensate the Owner for the Construction Manager's and the Architect's services and expenses made necessary thereby.</u>

<p>A232-2019 Section Reference</p>	<p>Modifications to A232--2019 for use with A132-2019, Section 4.4</p>	<p>Modifications to A232-2019 for use with A132-2019, Section 4.3</p>
<p>Correction of Work (After Substantial Completion) 12.2.4</p>	<p>The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor’s correction or removal of Work that is not in accordance with the requirements of the Contract Documents, <u>unless the corrective work is otherwise permitted in the Agreement to be reimbursed as a Cost of the Work, in which case the cost of corrective Work shall be subject to the Guaranteed Maximum Price.</u></p>	<p>The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor’s correction or removal of Work that is not in accordance with the requirements of the Contract Documents, <u>unless the corrective work is otherwise permitted in the Agreement to be reimbursed as a Cost of the Work.</u></p>
<p>Tests and Inspections 13.4.3</p>	<p>If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager’s and Architect’s services and expenses, shall be at the Contractor’s expense, <u>unless the testing, inspection, or approval activity is otherwise permitted in the Agreement to be reimbursed as a Cost of the Work, in which case the costs for testing, inspection, or approval shall be subject to the Guaranteed Maximum Price.</u></p>	<p>If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager’s and Architect’s services and expenses, shall be at the Contractor’s expense, <u>unless the testing, inspection, or approval activity is otherwise permitted in the Agreement to be reimbursed as a Cost of the Work.</u></p>