



# AIA Document A132™ – 2009 SP Exhibit A

## *Determination of the Cost of the Work*

for the following Project:

*(Name, location and brief description)*

THE OWNER:

*(Name, legal status, address and other information)*

THE CONTRACTOR:

*(Name, legal status, address and other information)*

THE CONSTRUCTION MANAGER:

*(Name, legal status, address and other information)*

THE ARCHITECT:

*(Name, legal status, address and other information)*

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232™–2009 SP, General Conditions of the Contract for Construction, for use on a Sustainable Project, Construction Manager as Adviser Edition; B132™–2009 SP, Standard Form of Agreement Between Owner and Architect, for use on a Sustainable Project, Construction Manager as Adviser Edition; and C132™–2009 SP, Standard Form of Agreement Between Owner and Construction Manager as Adviser, for use on a Sustainable Project.

AIA Document A232™–2009 SP is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

### ARTICLE A.1 CONTROL ESTIMATE

§ A.1.1 Where the Contract Sum is based on the Cost of the Work, plus the Contractor’s Fee without a Guaranteed Maximum Price pursuant to Section 4.1 of the Agreement, the Contractor shall prepare and submit to the Construction Manager, for the Owner, in writing, a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor’s Fee. The Control Estimate shall be used to monitor actual costs and the timely performance of the Work. The Contractor shall update the Control Estimate with each Application for Payment as needed to reflect Changes in the Work.

§ A.1.2 The Control Estimate shall include

- .1 the documents enumerated in Article 1 of the Agreement, including all Addenda thereto and the Conditions of the Contract;

- .2 a list of the clarifications and assumptions made by the Contractor in the preparation of the Control Estimate, including assumptions under A.1.4, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 schedules indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment that must be ordered well in advance of construction, and the Owner's occupancy requirements showing portions of the Project having occupancy priority; and
- .5 contingencies for further development of design and construction as required by Section A.1.4.

§ A.1.3 The Contractor shall meet with the Owner and Construction Manager to review the Control Estimate. In the event that the Owner or Construction Manager discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ A.1.4 To the extent that the Drawings and Specifications, and the Sustainability Plan, are anticipated to require further development by the Architect, the Contractor shall provide in the Control Estimate for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

§ A.1.5 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Construction Manager with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, through the Construction Manager, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

## ARTICLE A.2 COSTS TO BE REIMBURSED

### § A.2.1 Cost of the Work

§ A.2.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article A.2.

§ A.2.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing the Agreement.

### § A.2.2 Labor Costs

§ A.2.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.2.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
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§ A.2.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.2.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.2.2.

§ A.2.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner's prior approval.

### § A.2.3 Subcontract Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of their subcontracts.

### § A.2.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.2.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.2.4.2 Costs of materials described in the preceding Section A.2.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### § A.2.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.2.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ A.2.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.2.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.2.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ A.2.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

### § A.2.6 Miscellaneous Costs

§ A.2.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ A.2.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ A.2.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ A.2.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by A232™–2009 SP, General Conditions of the Contract for Construction, for use on a Sustainable Project, current as of the date of this Agreement and Exhibit or by other provisions of the Contract Documents, and which do not fall within the scope of Section A.2.7.3.

§ A.2.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents, the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents, and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ A.2.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ A.2.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ A.2.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ A.2.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.

§ A.2.6.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

#### § A.2.7 Other Costs and Emergencies

§ A.2.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.2.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.2.7.3 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 negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

#### § A.2.8 Related Party Transactions

§ A.2.8.1 For purposes of Section A.2.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ A.2.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner and the Construction Manager of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article A.5. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article A.5.

## ARTICLE A.3 COSTS NOT TO BE REIMBURSED

§ A.3.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section A.2.2.2;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Article A.2;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section A.2.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Article A.2; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

## ARTICLE A.4 DISCOUNTS, REBATES AND REFUNDS

§ A.4.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ A.4.2 Amounts that accrue to the Owner in accordance with Section A.4.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## ARTICLE A.5 SUBCONTRACTS AND OTHER AGREEMENTS

§ A.5.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Construction Manager and Architect. The Owner shall then determine, with the advice of the Contractor, Construction Manager, and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ A.5.2 When a the Contractor has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Contractor, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article A.6, below.

## ARTICLE A.6 ACCOUNTING RECORDS

§ A.6.1 The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner and the Construction Manager. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records, for a period of three years after final payment, or for such longer period as may be required by law.

§ A.6.2 When the Contractor believes that all the Work required by the Agreement has been fully performed, the Contractor shall deliver to the Owner's auditors through the Construction Manager, a final accounting of the Cost of the Work.



§ A.6.3 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Construction Manager by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section A.6.2 have been met, the Construction Manager and Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Construction Manager and Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A232–2009 SP. The time periods stated in this Section A.6.3 supersede those stated in Section 9.4.1 of AIA Document A232–2009 SP. The Construction Manager and Architect are not responsible for verifying the accuracy of the Contractor's final accounting.

§ A.6.4 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the dispute without a further decision of the Initial Decision Maker. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Construction Manager and Architect's final Certificate for Payment. If the Contractor fails to request mediation within this 30-day period, the substantiated amount reported by the Owner's auditors shall become binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount, if any, determined by the Owner's auditors to be due the Contractor.

§ A.6.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs in connection with the correction of defective or non-conforming work as described in Article A.2, Costs to be Reimbursed, and not excluded by Article A.3, Costs Not to be Reimbursed, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Contractor has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.