Pete Fowler CONSTRUCTION Services, Inc.

# Audience Handout Package

| | |
|---|---|
| Date: | 01/16/2024 |
| To: | |
| From: | Pete Fowler Construction Services, Inc. |
| Project: | Terminating a Construction Project Before Completion Webinar 1/18/2024 (PFCS 23-1126) |
| Regarding: | 1/18/2024 Webinar: Terminating a Construction Contract Before Completion |

## Meet the Panel

### Pete Patterson

#### EXPERT - PETE FOWLER CONSTRUCTION

Pete Patterson has over 45 years of building experience as a carpenter, superintendent, construction manager, building designer, general contractor, custom homebuilder, and expert building consultant. Having worked in or managed all aspects of construction — from land selection, architectural design, and general contracting of highly-complex, super-custom residential and commercial projects, Pete is a respected expert in design and construction. Proficient in building codes, mechanical, electrical and plumbing trades, cost estimating and building inspection, Pete's experience runs the gamut from detailed design projects, hands-on building, to high-level consulting. Pete's career accomplishments include design, consulting, and general contracting of super-custom homes from California to Maine, and penthouses from Las Vegas to Honolulu - satisfying the most discerning clients on the most high-stakes projects.

### Rob Ward

#### ANALYST - PETE FOWLER CONSTRUCTION

Rob Ward has years of experience in project management and team leadership. He has worked hands-on with engineering projects, managing medium-large scale commercial construction from budgeting to closeout, and works closely with architects and contractors. Rob Ward is one of the talented technical Analysists at Pete Fowler Construction, and is a licensed professional engineer. Schedule a call to learn more about Rob's qualifications and expertise.

## Walter Nelson

### CASUALTY CLAIM SPECIALIST - HCC CASUALTY INSURANCE SERVICES, INC.

Walter Nelson is a seasoned Casualty Claims Specialist at Tokio Marine HCC, specializing in construction defect claims since 1996. With an impressive career spanning over 25 years, Mr. Nelson has established himself as an expert in handling complex claims related to high-end homes and condos, and holds the following designations: CRM, CGA, and CRIS. Alongside his professional endeavors, Walter finds joy in activities such as golfing, biking, hiking, and attending live music events.

## Ivette Kincaid

### PARTNER - KAHANA & FELD, LLP

Ivette Kincaid is a Partner at Kahana Feld and Chair of the Construction Defect Practice Group. Ms. Kincaid is also a member of the general liability and insurance defense practice groups. Ms. Kincaid has 27 years of experience representing clients in complex construction defect litigation, complex bodily injury litigation, catastrophic injury and general insurance defense matters. Ms. Kincaid focuses on the defense of homebuilders, contractors, developers and real estate professionals primarily in construction defect, general liability, insurance defense, construction accident and real estate matters. Ms. Kincaid also has extensive experience in the defense of companies and individuals as it pertains to general liability and personal injury matters.

Ms. Kincaid is known as an effective, professional and thorough litigator. She understands the importance of early evaluation of cases to ensure they are being property and efficiently prepared for either settlement or trial.

# Presentation Materials

1. Lesson Plan with links to referenced backup materials.
2. PDF of PowerPoint Slides

# Terminating a Construction Project Before Completion: Do's, Don'ts, Claims & Litigation Webinar

## OFFICES

**CALIFORNIA**

(949) 240-9971

1101 California Ave, #213
Corona, CA 92881

**NEVADA**

(725) 333-2365

2470 St Rose Pkwy, Ste 104
Las Vegas, NV 89074

**FLORIDA**

(407) 517-0650

9100 Conroy Windermere Rd,
Ste 281
Windermere, FL 34786

**TEXAS**

(469) 677-8710


Pete Fowler
CONSTRUCTION
Services, Inc.

Pete Fowler CONSTRUCTION Services, Inc.

# Terminating a Construction Project Before Completion: Do's, Don'ts, Claims & Litigation Webinar

## INTRODUCTION

Construction is expensive, and the spectrum of professional practice varies wildly. While some professionals uphold the industry's gold standards, others can be disappointing at best and criminally negligent at worst. In some cases, a judgement call must be made to terminate a project prior to completion. Unfortunately, this process is usually expensive and complicated.

It is possible to ease the stress of ending a project by using a standard structure that considers the contract documents, construction industry standards, and the "iron triangle" (scope, budget, and schedule with quality at the core) of project management. This structure does not magically make termination quick and cheap, but it does make the process as efficient and painless as possible. No matter what stage of a construction project-gone-bad you are in, remember you are not trapped. You can always negotiate from a position of strength.

"Terminating a Construction Project Before Completion" is for everyone involved in the business of building or buildings, including property owners & managers, governmental organizations, developers, contractors, insurers, lawyers, and anyone else caught up in the headaches of a project that has gone wrong or has already been terminated.

The course will explain the roles and responsibilities of the different parties who contribute to a construction project, teach our Construction Claim Analysis framework, and review case studies that demonstrate successful project termination from the perspective of both owners and subcontractors.

## PROGRAM OUTLINE

1. Introduction
2. Contracting 101
3. Construction Claim Analysis Framework
4. Read the F*** Contract
5. Calculating Damages
6. Salvaging a Project
7. Insurance Coverage
8. Conclusion

## LEARNING OBJECTIVES

- Review the basic roles & responsibilities in construction.
- Learn a framework for analyzing a construction claim.
- Discuss how damages are calculated after a contract is terminated.
- Strategize how one might salvage a construction project rather than terminate.
- Review case studies and real world examples of projects that were terminated before completion.

## PROGRAM CONTENTS

1. Introduction – 5 Minutes
    A. Who We Are
    B. Presenter Information
    C. Program Outline
    D. Introduction
    E. Learning Objectives
2. Contracting 101 - 20 Minutes
    A. Contracting 101
    B. Project Management
    C. Prime vs. Sub Contracts
    D. DBSKCV Overview
    E. Project Delivery Schemes
3. Construction Claim Analysis Framework - 15 Minutes
    A. Case Study
    B. Pete Fowler Construction Services Construction Claims Analysis Method
    C. Claim Analysis Graphic
4. Read the F*** Contract - 25 Minutes
    A. Sample Construction Contract
    B. Termination or Suspension of the Contract
    C. Termination by the Contractor
    D. Termination by Owner for Cause
    E. Suspension by the Owner for Convenience
    F. Termination by the Owner for Convenience
5. Calculating Damages - 20 Minutes
    A. Case Study
    B. Total Construction Value
    C. Total Paid & Invoiced
    D. Professional Fees
    E. Cost to Repair Defects
    F. Cost to Complete
    G. Delays: Liquidated or Actual Damages
    H. Total Damages
6. Salvaging a Project – 20 Minutes
    A. Case Study
    B. Evaluating the Work in Place
    C. Completion Plan
    D. Calculating Damages, Costs, and Benefits
    E. Negotiations
7. Insurance – 10 Minutes
    A. Types of Insurance
    B. Coverage
    C. Cost of Defense
    D. Consequential Damages
8. Conclusion – 5 Minutes
    A. Backup Materials
    B. Feedback

## BACKUP MATERIALS

1. Case Study: Un-screwing A Screwed-Up Medical Building
2. Claim Analysis Graphic Chart
3. Case Study: Contract Termination in a Single Family Home
4. AIA Document A101-2017
5. AIA Document A201-2017
6. Case Study: Breach of Contract
7. Calculating Damages Materials
8. Trials: Tribulations, Triumphs, or Both? by Pete Fowler

Pete Fowler CONSTRUCTION Consultants

# Terminating a Construction Project Before Completion:
## Do's, Don'ts, Claims & Litigations Webinar

*With Ivette Kincaid, Walter Nelson, Pete Patterson and Rob Ward*

Thursday, January 18th, 2024 AT 10:00AM Pacific

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# Building Experts

HELPING SMART PEOPLE
MAKE SMART DECISIONS

INSPECTION & TESTING
ESTIMATING, QUALITY & CONSTRUCTION MANAGEMENT
CLAIMS & LITIGATION:

*Construction Defects; Property & Injury; Contract Claims*

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# OUR CLIENTS

1. Property Owners & Managers
2. Financial Institutions Including Lenders
3. Builders, Developers and Construction Contractors
4. Product Manufacturers and Suppliers
5. Government
6. Insurers
7. Lawyers

## Project Map

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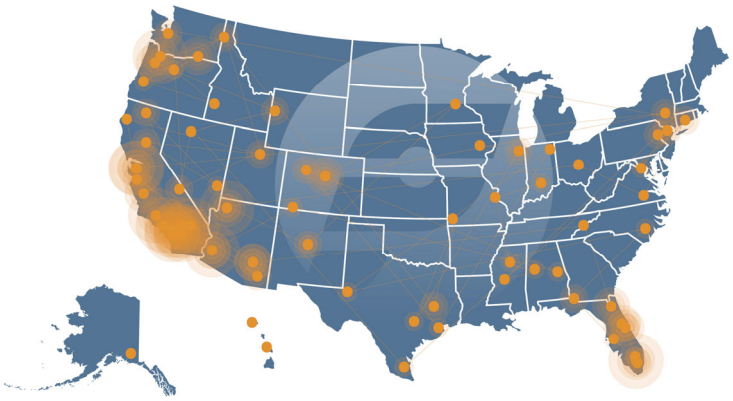

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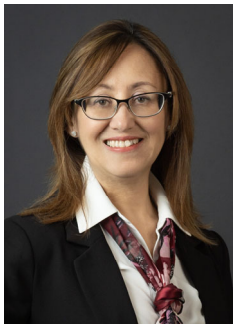
# Meet our Presenters



Ivette Kincaid

Partner
*Kahana & Feld, LLP*

Walter Nelson

Casualty Claims Specialist
*HCC Casualty Insurance Services, Inc.*

Pete Patterson

Expert
*Pete Fowler Construction*

Rob Ward

Analyst
*Pete Fowler Construction*

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# Program Outline

1. Introduction
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# Learning Objectives

- Review the basic roles and responsibilities in construction.
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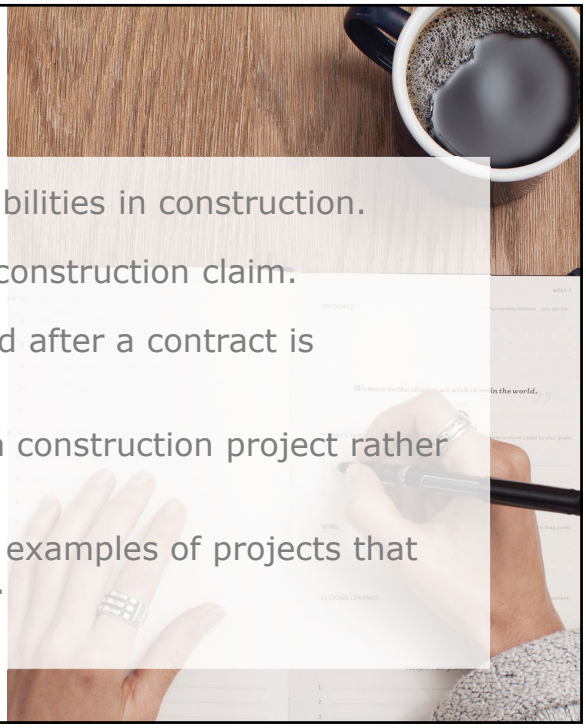

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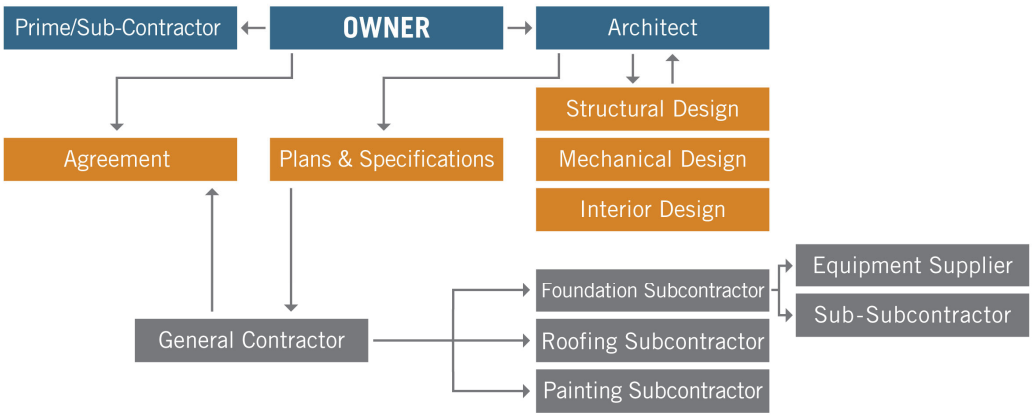
# Contracting 101

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# Project Management

INVESTIGATION

| SCOPE | BUDGET | ACTUAL | SCHEDULE | | | | | |
|---|---|---|---|---|---|---|---|---|
| Item 1 | $ XXX | $ XXX | Plan | Actual | | | | |
| Item 2 | $ XXX | $ XXX | | Plan | Actual | | | |
| Item 3 | $ XXX | $ XXX | | | Plan | Actual | | |
| Item 4 | $ XXX | $ XXX | | | | Plan | Actual | |
| Item 5 | $ XXX | $ XXX | | | | | Plan | Actual |
| **Total** | **$ X,XXX** | **$ X,XXX** | | | | | | |

Budget

Schedul

**"Everybody has a plan until they get punched in the mouth."**

— Mike Tyson

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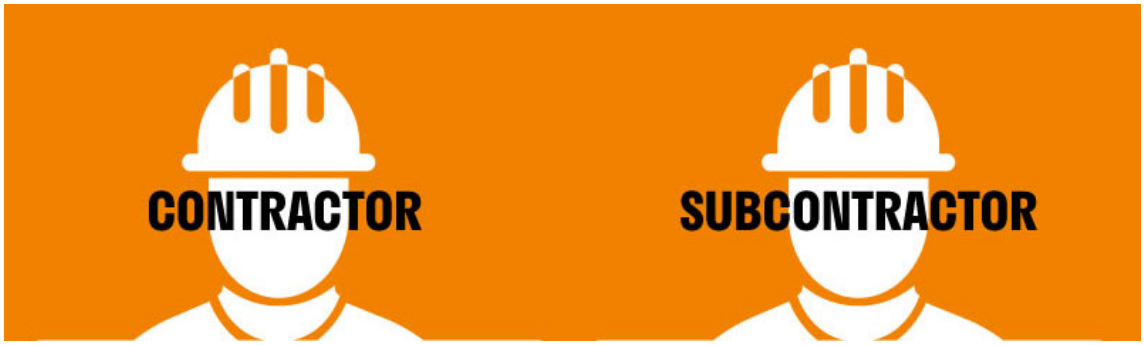
# Prime vs. Sub Contracts

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# DBSKCV Overview

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# Project Delivery Schemes

- Design-Bid-Build
- Construction Management
- Design-Build
- Owner-Builder
- Integrative Project Delivery (IPD)
- SO many more…

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# Case Study:

## Un-screwing A Screwed-Up Medical Building

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3. Construction Claim Analysis Framework

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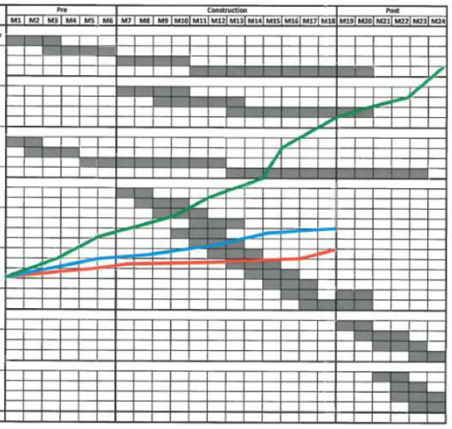
3. Construction Claim Analysis Framework

# Claim Analysis Graphic

A B C

| Expense Category | B | LC | TCV | P | I | R | C |
|---|---|---|---|---|---|---|---|
| **Architectural Design** | | | | | | | |
| 1 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 2 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 3 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 4 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| **Interior Design** | | | | | | | |
| 1 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 2 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 3 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 4 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| **Other - Design + Materials** | | | | | | | |
| 1 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 2 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 3 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 4 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| **Construction** | | | | | | | |
| 1 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 2 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 3 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 4 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 5 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 6 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 7 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 8 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 9 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 10 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 11 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 12 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| **Post Construction** | | | | | | | |
| 1 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 2 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 3 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 4 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| **Experts** | | | | | | | |
| 1 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 2 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 3 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| 4 | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ | $$$ |
| **Totals** | | | | | | | |




B = Budget
LC = Legit Changes
TCV = Total Construction Value
P = Paid

M1 = Month 1
I = Invoiced
R = Repair
C = Complete

Green Line = Actual Paid
Blue Line = Revised Budget
Red Line = Original Budget

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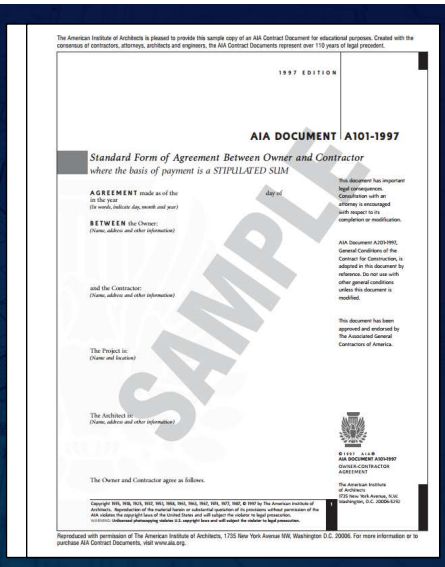
# Sample Construction Contract

1. What should the contract say?
2. What is required the contract say in California?
3. Whose favor is the contract written in?



The American Institute of Architects is pleased to provide this sample copy of an AIA Contract Document for educational purposes. Created with the consensus of contractors, attorneys, architects and engineers, the AIA Contract Documents represent over 110 years of legal precedent.

1997 EDITION

AIA DOCUMENT A101-1997

*Standard Form of Agreement Between Owner and Contractor where the basis of payment is a STIPULATED SUM*

**AGREEMENT** made as of the day of in the year
*(In words, indicate day, month and year)*

**BETWEEN** the Owner:
*(Name, address and other information)*

and the Contractor:
*(Name, address and other information)*

The Project is:
*(Name and location)*

The Architect is:
*(Name, address and other information)*

The Owner and Contractor agree as follows.

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

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

AIA DOCUMENT A101-1997
OWNER-CONTRACTOR AGREEMENT

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1735 New York Avenue, N.W.
Washington, D.C. 20006-5292

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SAMPLE

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# Termination or Suspension of the Contract

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1997 EDITION

AIA DOCUMENT A201-1997

*General Conditions of the Contract for Construction*

TABLE OF ARTICLES

1. GENERAL PROVISIONS
2. OWNER
3. CONTRACTOR
4. ADMINISTRATION OF THE CONTRACT
5. SUBCONTRACTORS
6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7. CHANGES IN THE WORK
8. TIME
9. PAYMENTS AND COMPLETION
10. PROTECTION OF PERSONS AND PROPERTY
11. INSURANCE AND BONDS
12. UNCOVERING AND CORRECTION OF WORK
13. MISCELLANEOUS PROVISIONS
14. TERMINATION OR SUSPENSION OF THE CONTRACT

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This document has been approved and endorsed by The Associated General Contractors of America.

**14. TERMINATION OR SUSPENSION OF THE CONTRACT**

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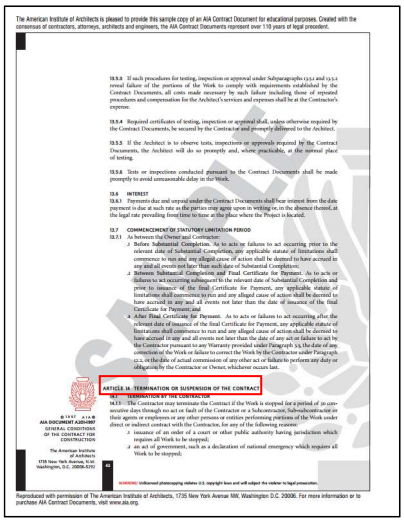
# Termination or Suspension of the Contract



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**13.5.3** If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 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 Architect's services and expenses shall be at the Contractor's expense.

**13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

**13.5.5** If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**13.5.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

**13.6 INTEREST**

**13.6.1** Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in Writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

**13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

**13.7.1** As between the Owner and Contractor:

.1 Before Substantial Completion, As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

.2 Between Substantial Completion and Final Certificate for Payment, As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

.4 After Final Certificate for Payment, As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

**ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

**14.1.1 TERMINATION BY THE CONTRACTOR**

**14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

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AIA DOCUMENT A201®2017
GENERAL CONDITIONS
OF THE CONTRACT FOR
CONSTRUCTION

The American Institute
of Architects
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- 14.1 Termination by the Contractor
- 14.2 Termination by the Owner for Cause
- 14.3 Suspension by the Owner for Convenience
- 14.4 Termination by the Owner for Convenience

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# Termination or Suspension of the Contract by the Contractor

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.1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

.3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Subparagraph 2.2.1.

**14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**14.1.3** If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

**14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.3.

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# Termination by the Owner for Cause

**14.2 TERMINATION BY THE OWNER FOR CAUSE**

**14.2.1** The Owner may terminate the Contract if the Contractor:

.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**14.2.2** When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 accept assignment of subcontracts pursuant to Paragraph 5.4; and

.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**14.2.3** When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

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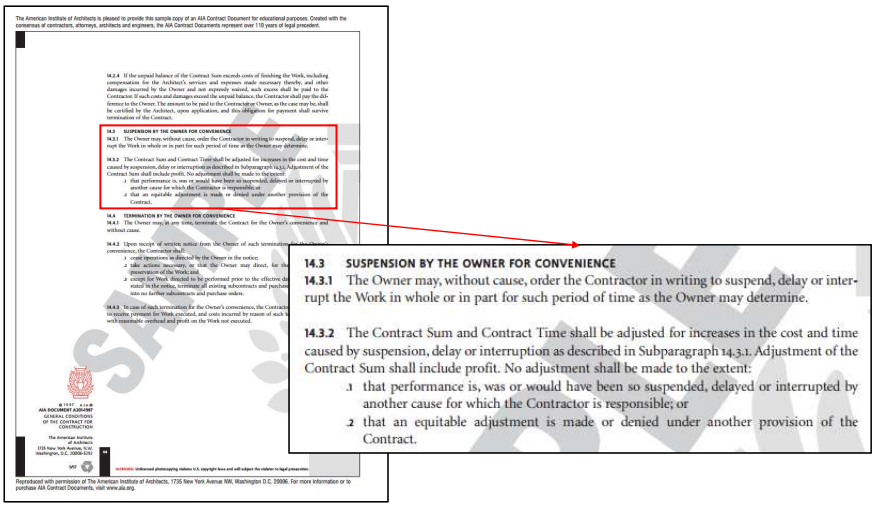
4. RTFC

# Suspension by the Owner for Convenience



**14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Subparagraph 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

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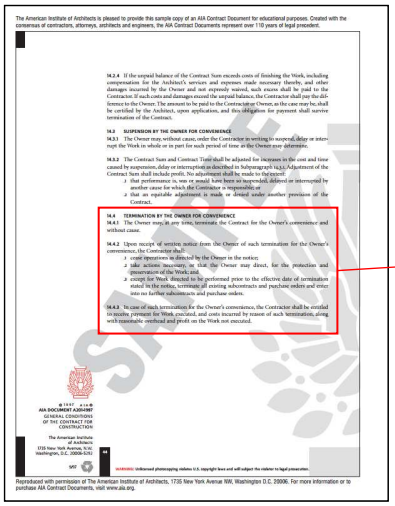
4. RTFC

# Termination by the Owner for Convenience



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**14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

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**14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

**14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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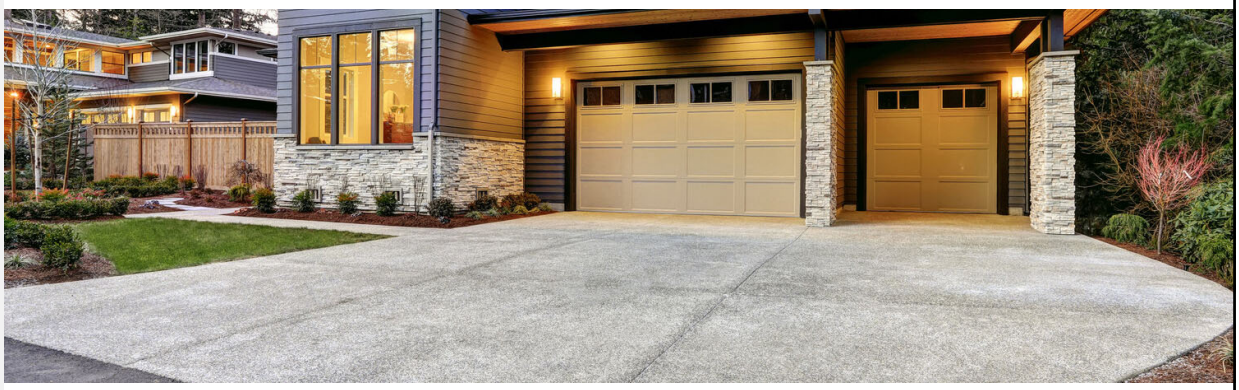
2. CASE STUDIES

# Construction Contract Claim:

## Breach of Contract



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5. Calculating Damages

# Total Construction Value

Exhibit A - Schedule of Values

| Line Item | Cost | Per Unit | Comments |
|---|---|---|---|
| General Requirements | $196,365 | $1,160 | |
| Architecture | $86,500 | $527 | |
| Demolition | $243,800 | $1,490 | |
| Fresh Grading | $45,500 | $268 | |
| Retaining Walls | $40,000 | $235 | |
| Landscape | $57,000 | $335 | |
| Sewer Distribution | $15,500 | $95 | |
| Asphalt Pavement | $80,000 | $476 | |
| Pavement Striping/ Tactile Warnings | $1,960 | $11 | |
| Concrete Pavement (trash enclosures) | $12,500 | $74 | |
| Concrete Sidewalks | $32,000 | $187 | |
| Perimeter Fencing & Gates (Tubular Steel) | $60,000 | $355 | |
| Brick Veneer | $15,000 | $89 | |
| Handrails and Railings | $80,500 | $481 | |
| Asphalt Shingle Roofing | $139,840 | $832 | |
| Roof Accessories, Gutters & Downspouts | $30,000 | $178 | |
| Waterproofing | $40,000 | $250 | |
| Stucco | $42,000 | $263 | |
| Windows & Sliding Glass Doors | $534,400 | $3,374 | |
| Window Treatments - units only | $21,290 | $126 | |
| Rough Carpentry | $30,000 | $175 | |
| Insulation | $59,640 | $350 | |
| Gypsum Board | $710,674 | $4,266 | |
| Painting (Interior) | $226,620 | $1,361 | |
| Painting (Common area) | $13,600 | $500 | |
| Finish Carpentry | $172,600 | $1,020 | |
| Finish Hardware | $65,200 | $405 | |
| Mirrors | $11,000 | $65 | |
| Shelving | $15,000 | $89 | |
| Counter Tops | $75,400 | $450 | |
| Ceramic Tile | $54,050 | $321 | |
| Resilient Flooring - Units | $28,140 | $168 | |
| Carpet - Units | $270,494 | $1,610 | |
| Fire Extinguishers | $2,778 | $17 | |
| Mailboxes | $7,500 | $45 | |
| Appliances | $238,800 | $1,435 | |
| Plumbing | $429,000 | $2,554 | |
| HVAC | $597,710 | $3,491 | |
| Electrical | $818,300 | $4,871 | |
| Plumbing Fixtures | $64,000 | $381 | |
| Elevator | $12,800 | $75 | |
| CATV | $12,800 | $75 | |
| Playground Equipment | $38,000 | $225 | |
| Recreational Amenities | $1,850 | $11 | |
| Trash Enclosure | $5,500 | $27 | |
| Building Signage | $15,000 | $89 | |
| Pool | $3,500 | $21 | |
| Cleanup | $67,200 | $400 | |
| Community room | $450,000 | $2,680 | |
| **Subtotal** | **$6,480,688** | **$38,580** | |
| Overhead (builders risk and liability) | $324,034 | $1,929 | |
| Overhead and Fee - 5% | $324,034 | $1,929 | |
| **GRAND TOTAL** | **$6,949,412** | **$41,360** | |

[redacted]

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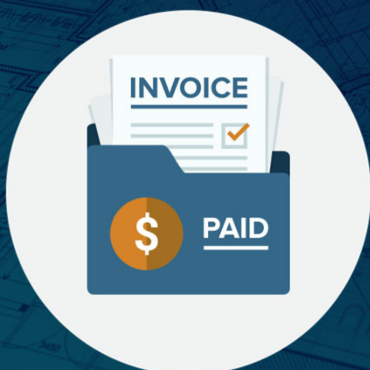
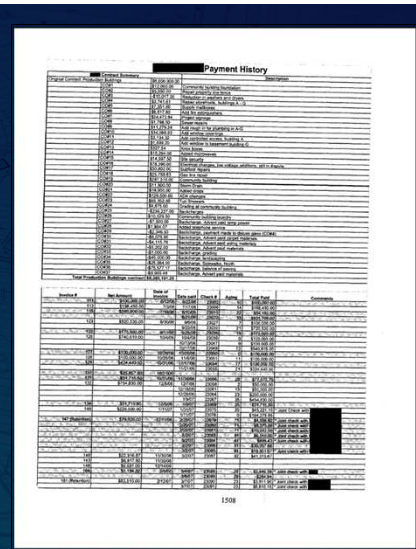
# Total Paid & Invoiced





[redacted] Payment History

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# Professional Fees

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# Cost to Repair Defects

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5. Calculating Damages

# Cost to Complete

| Vendor | Amount | Date | PO # | Invoice # | Category |
|---|---|---|---|---|---|
| [redacted] | 25,000.00 | 2008/01/17 | 1811 | WA 0108 VISA FW PO | Production buildings and sitework |
| | 33,028.35 | 2007/11/01 | 1722 | WF 1107 VISA FW PO | Production buildings and sitework |
| | 13,042.92 | 2007/12/03 | 1722 | WF 1207 VISA FW PO | Production buildings and sitework |
| | 53,950.29 | 2008/01/03 | 1722 | WF 0108 VISA FW PO | Production buildings and sitework |
| | 15,294.60 | 2008/02/01 | 1722 | WF 0208 VISA FW PO | Production buildings and sitework |
| | 589.34 | 2008/03/03 | 1722 | WF 0308 VISA FW PO | Production buildings and sitework |
| | 527.25 | 2008/07/16 | 1722 | WF 0708 FW | Production buildings and sitework |
| | 97,174.58 | | | | Production buildings and sitework |
| **Total additional cost to complete** | **1,697,659.21** | | | | |
| 20% overhead | 339,531.84 | | | | |
| **Subtotal Cost to complete** | **$2,037,191.05** | | | | |
| Total Paid to [redacted] | $5,538,001.96 | | | | |
| Total cost to complete | $7,575,193.01 | | | | |
| Less [redacted] contract | $6,567,008.41 | | | | |
| **Total cost to complete damages** | **$1,008,184.60** | | | | |
| [redacted] | 473.00 | 2007/09/29 | 1818 | WGL-VXE | |
| | 20,000.00 | 2008/03/20 | | OP EXP | |
| | 50,000.00 | 2008/09/30 | | OP EXP | |
| | 8,748.00 | 2007/09/11 | 1669 | 73187 | |
| | 3,710.00 | 2007/12/20 | 1669 | 74701 | |
| | 5,832.00 | 2007/09/24 | 1677 | AD-HOBSON | |
| | 89.29 | 2007/11/30 | 1835 | 1130075272 | |
| | 139.00 | 2007/12/02 | 1835 | 1202075264 | |
| | 1,194.14 | 2007/12/03 | 1835 | 1203075256 | |
| | 292.03 | 2007/08/02 | 1614 | 310557 | Operation Expense |
| | 292.03 | 2007/09/05 | 1614 | 312178 | Operation Expense |
| | 292.03 | 2007/10/02 | 1614 | 313656 | Operation Expense |
| | 292.03 | 2007/11/02 | 1614 | 315271 | Operation Expense |
| | 7,393.00 | 2008/01/02 | 1802 | STMT010208 | Operation Expense |
| | 2,473.35 | 2008/02/01 | 1802 | STMT020108 | Operation Expense |
| | 5,514.48 | 2008/03/03 | 1802 | STMT030308 | Operation Expense |
| | 5,514.47 | 2008/04/02 | 1802 | STMT040208 | Operation Expense |
| | 5,514.48 | 2008/05/08 | 1802 | STMT050808 | Operation Expense |
| | 5,514.47 | 2008/06/02 | 1802 | STMT060208 | Operation Expense |


| | |
|---|---|
| **Total additional cost to complete** | **1,697,659.21** |
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| Less [redacted] contract | $6,567,008.41 |
| **Total cost to complete damages** | **$1,008,184.60** |


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5. Calculating Damages

# Delays: Liquidated or Actual Damages

[redacted]

CHANGE ORDERS AND DISCREPANCIES

| | | | | | |
|---|---|---|---|---|---|
| C.O. # 1 | Community Building Foundation | $ 12,890.00 | DISCREPANCY | | |
| C.O. # 2 | Repair Drivers Entry Curb | $ 1,800.00 | PAID IN FULL # [redacted] | | |
| C.O. # 3 | Alternation Drawings and Drywall | $ (847,907.00) | PAID IN FULL # [redacted] | | |
| C.O. # 4 | Alternation Drawings Closing | $ 847,907.00 | DISCREPANCY | | |
| C.O. # 5 | Supply Materials | $ 5,750.00 | PAID IN FULL # [redacted] | | |
| C.O. # 6 | HVAC/Fire Extinguishers | $ 8,247.00 | PAID IN FULL # [redacted] | | 20,775.00 |
| C.O. # 7 | Drywall Repair | $ 20,775.00 | CHARGEBACK # 2 | | 20,775.00 |
| C.O. # 8 | Drywall Repair | $ 10,450.00 | PAID IN FULL # [redacted] | | |
| C.O. # 9 | Add Weight to Ice Flooding (5 C.O. | $ 1,750.00 | PAID IN FULL # [redacted] | | |
| C.O. # 10 | Add Weight to Ice Flooding (5 C.O. | $ 11,750.00 | PAID IN FULL # [redacted] | | |
| C.O. # 11 | Add Additional Insulation | $ 42,000.00 | DISCREPANCY | | |
| C.O. # 12 | Add Additional Insulation Building A | $ 42,000.00 | PAID IN FULL # [redacted] | | 317,180.74 |
| C.O. # 13 | Add Window to Basement Building A | $ 1,500.00 | PAID IN FULL # [redacted] | | |
| C.O. # 14 | Add Window | $ 1,500.00 | PAID IN FULL # [redacted] | | |
| C.O. # 15 | Change Performance with Cleaner | $ 800.00 | THIS IS DONE - SEE [redacted] | ALL METAL | 800.15 |
| C.O. # 16 | Wire Security | $ 16,987.00 | PAID IN FULL # [redacted] | | |
| C.O. # 17 | Change Wiring Locks (Village Additions) | $ 16,987.00 | PAID IN FULL # [redacted] | | 543,773.00 |
| C.O. # 18 | Outdoor Receptacles (GFCI) AT WE GOT LAKE | $ 16,000.00 | PAID IN FULL # [redacted] | | |
| C.O. # 19 | Gas Line Repair (PLEASE TO DO REPAIR) | $ 20,000.00 | PAID IN FULL # [redacted] | | |
| C.O. # 20 | Security Cameras | $ 27,799.00 | PAID IN FULL # [redacted] | | |
| C.O. # 21 | Storm Drain Building | $ 17,000.00 | PAID IN FULL # [redacted] | ALL LABOR | 361,700.00 |
| C.O. # 22 | Hidden Drain | $ 15,000.00 | [redacted] | | |
| C.O. # 23 | Hidden Drain | $ 15,000.00 | [redacted] | | |
| C.O. # 24 | Lock Shower | $ 40,000.00 | [redacted] | | |
| C.O. # 25 | Grading at the Community Building | $ 40,000.00 | [redacted] | | |
| C.O. # 26 | Community Building | $ 2,000.00 | [redacted] | | |
| C.O. # 27 | Community Building LABOR | $574,217.00 | [redacted] COLLECTING FOR CO # 26 - 30 | MONTH 12 | $128,500.00 |
| C.O. # 27 | Hold-in-place [redacted] | $ 128,500.00 | [redacted] | | |
| C.O. # 28 | Hold-in-place [redacted] | $ 37,500.00 | Paid to [redacted] | ST. LOUIS AT ASHBY | $2,434.01 |
| C.O. # 29 | Added Headlines Service | $ 1,434.01 | PAID IN FULL # [redacted] | | |
| C.O. # 30 | Backchargeo Payment made [redacted] | $0.00 | PAID IN FULL # [redacted] | | |
| C.O. # 31 | Backchargeo [redacted] paid HVAC materials | $0.00 | ACCOUNTED FOR ON ORIGINAL CONTRACT NUMBERS | | |
| C.O. # 32 | Backchargeo [redacted] paid siding materials | (54,117.74) | JOINT CHECK | | |
| C.O. # 33 | Backchargeo [redacted] paid concrete | (55,262.02) | JOINT CHECK | | |
| C.O. # 33 | Backchargeo Grading | $0.00 | ACCOUNTED FOR ON ORIGINAL CONTRACT NUMBERS | | |
| C.O. # 34 | Backchargeo Landscaping | $0.00 | ACCOUNTED FOR ON ORIGINAL CONTRACT NUMBERS | | |
| C.O. # 35 | Backchargeo Sidewalks North | $0.00 | ACCOUNTED FOR ON ORIGINAL CONTRACT NUMBERS | | |
| C.O. # 36 | Backchargeo Balance of paving | $0.00 | ACCOUNTED FOR ON ORIGINAL CONTRACT NUMBERS | | |
| C.O. # 37 | Backchargeo Allowed paid materials | $0.00 | ACCOUNTED FOR ON ORIGINAL CONTRACT NUMBERS | | |
| | [redacted] PAID MATERIALS | $0.00 | ACCOUNTED FOR ON ORIGINAL CONTRACT NUMBERS | | |
| | MATERIALS NOT DELIVERED BY CO | $0.00 | ACCOUNTED FOR ON ORIGINAL CONTRACT NUMBERS | | |
| | [redacted] NET NOT PAID PAYOUT 2/20 | (58,5L.18) | | | |
| | | $4,448.27 | Water and Sewer Tap for Community Bldg | | |
| | TOTAL CHANGE ORDERS | $ 60,798.38 | | | |
| | | | TOTAL DISCREPANCIES | | $60,798.38 |
| | | | TOTAL CHANGE ORDERS / DISCREPANCIES | | $ 60,798.38 |

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# Total Damages

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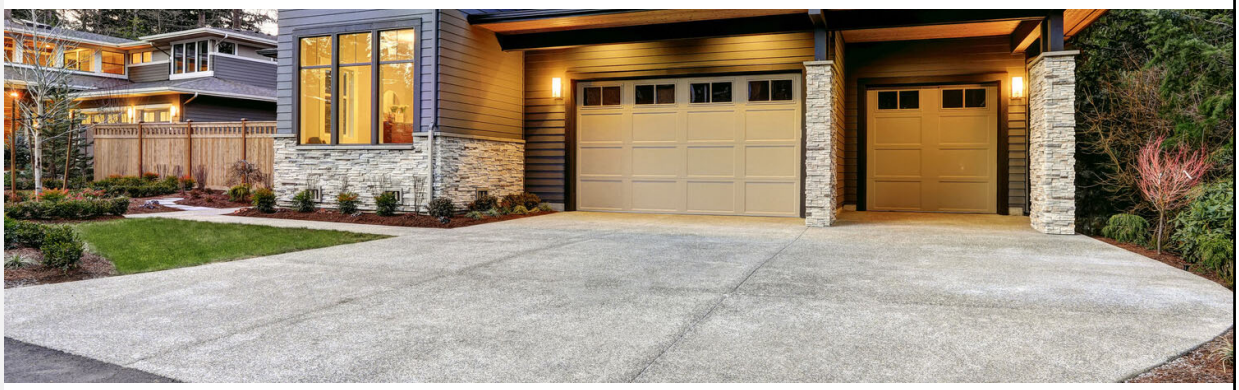
2. CASE STUDIES

# Construction Contract Claim:

## Contract Termination in a Single Family Home



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# Evaluating the Work in Place

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# Completion Plan

- Scope
- Budget to Complete
- Schedule

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6. Salvaging A Project

# Calculating Damages, Costs, & Benefits

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# Negotiations

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# Insurance

- Types of Insurance
- Coverage
- Cost of Defense
- Consequential Damages

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# Learning Objectives

- Review the basic roles and responsibilities in construction.
- Learn a framework for analyzing a construction claim.
- Discuss how damages are calculated after a contract is terminated.
- Strategize how one might salvage a construction project rather than terminate.
- Review case studies and real-world examples of projects that were terminated before completion.

# Feedback is the Breakfast of Champions

You will receive a survey link immediately following the webinar. We put a lot of effort into providing these programs free of charge, we just ask that you take a few seconds to leave your feedback on today's presentation.

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