



# AIA<sup>®</sup> Document D503<sup>™</sup> – 2013

## *Guide for Sustainable Projects, including Commentary on the AIA Sustainable Projects Documents*

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# Introduction

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## Purpose of this Guide

Sustainable design and construction continues to be a rapidly evolving area of importance to the construction industry. New codes, like the 2012 International Green Construction Code (IgCC), and new or revised certification systems, like Green Globes™, will continue to create new roles, responsibilities and risks for Owners, Architects and Contractors. It is important to develop contracts that are specifically tailored to these new or expanded roles, responsibilities and risks.

In 2011, the American Institute of Architects released D503–2011™ Guide for Sustainable Projects, including Agreement Amendments and Supplementary Conditions. Since that time, the AIA has continued its commitment to leadership in the area of sustainable design and construction by releasing “sustainable projects” (SP) versions of key AIA Contract Documents. The first set of these new “Sustainable Project” documents was released in 2012<sup>1</sup>.

As of the date of this Guide and Commentary (referred to herein as the “Guide”), the Sustainable Projects documents include

- A101™–2007 SP, Standard Form of Agreement Between Owner and Contractor, for use on a Sustainable Project where the basis of payment is a Stipulated Sum;
- A201™–2007 SP, General Conditions of the Contract for Construction, for use on a Sustainable Project;
- B101™–2007 SP, Standard Form of Agreement Between Owner and Architect, for use on a Sustainable Project;
- A401™–2007 SP, Standard Form of Agreement Between Contractor and Subcontractor, for use on a Sustainable Project; and
- C401™–2007 SP, Standard Form of Agreement Between Architect and Consultant, for use on a Sustainable Project.

These SP versions incorporate the model language developed for D503–2011 into the Conventional (A201) family of AIA Contract Documents, while maintaining underlying contractual relationships and language of the core agreement. Additionally, AIA Document B214™–2012, Standard Form of Architects Services: LEED® Certification was updated in 2012 to incorporate the new concepts developed in the Sustainable Projects documents. A discussion of B214–2012 may be found in [Chapter 5](#) of this Guide.

This Guide is meant to provide general background information on certain topics of interest to those pursuing sustainable projects and an explanation of, and the reasoning behind, the new provisions of the AIA’s Sustainable Project documents. AIA Document D503 was originally drafted to provide model language that the reader could incorporate into existing AIA Contract Documents. This 2013 update to the Guide shifts the focus from suggesting model language users might incorporate into the standard agreements, to a detailed discussion of each new provision actually included in the Sustainable Projects versions of the core documents current as of the date of this Guide.

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<sup>1</sup> The AIA plans to release additional SP versions of key AIA Contract Documents.

This Guide is drafted to provide general guidance and does not provide legal advice. Laws regarding the use and enforceability of the information included in this Guide may vary from jurisdiction to jurisdiction. Users of this Guide are encouraged to familiarize themselves with the laws and regulations applicable in the jurisdiction where the project is located and to consult with an experienced attorney.


### **Revisions to this Guide**

The Conventional (A201) family of AIA Contract Documents is published on a ten-year revision cycle. However, given the rapid development of sustainable design and construction, a ten year revision cycle might be too long to provide a meaningful tool for industry participants engaged in sustainable design and construction projects. This Guide allows the AIA to address new topics in sustainable design and construction as they develop. This Guide will be updated in response to feedback from industry participants and to reflect changing industry standards and practices. Any subsequent revisions to this Guide will be indicated by a change to the date in the lower right hand corner of the document. Please check periodically to confirm that you have the latest version of this Guide.

### **How to Use this Guide**

This Guide discusses sustainable design and construction issues in the context of the key agreements in the AIA's Conventional (A201) Family, Sustainable Projects documents. However, the concepts and suggestions discussed in this Guide, with careful review and coordination, may easily form the basis for your own modifications to non-AIA documents.

This Guide covers three main topics: the Special Definitions and general background information on some of the major considerations for sustainable projects (Chapters 1–2); a detailed discussion of the new language included in each of the Sustainable Projects documents and B214–2012 (Chapters 3–8); and a discussion of an example of a Sustainability Plan ([Chapter 9](#)).

To go to specific sections of interest in this guide, click Bookmark links or topics in the Table of Contents. To view bookmarks, click the Bookmark button  on the left-hand Navigation pane.

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# Chapter 1

## Special Definitions

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In 2007, the AIA Code of Ethics and Professional Conduct incorporated provisions addressing sustainable design, sustainable development and sustainable practices. Like the AIA Code of Ethics and Professional Conduct, this Guide employs the use of the term “sustainable.” As used in this Guide the term “sustainable” is intended to be construed as a common industry term used to describe, in general, projects that incorporate design and construction practices that are intended to offer benefits to the environment, enhance the health and wellbeing of building occupants, or increase energy efficiency. In this Guide, the term “sustainable” is synonymous with other nomenclature used to describe environmentally responsible design and construction such as “green design and construction” or “high performance building,” and is meant to apply to projects seeking certification, projects where sustainable features are jurisdictionally mandated and projects that incorporate the Owner’s own sustainability goals.

To facilitate the development of coordinated agreements for “sustainable” projects, A201–2007 SP contains a number of Special Definitions. Many of these new Special Definitions include the term “sustainable.” The Special Definitions are used as defined terms throughout this Guide and the Sustainable Projects documents and are listed here to provide an easy reference.

### **A201 SP ARTICLE 1, GENERAL PROVISIONS**

#### **§ 1.1.9 Special Definitions**

##### **§ 1.1.9.1 Sustainable Objective**

The Sustainable Objective is the Owner’s goal of incorporating Sustainable Measures into the design, construction, maintenance and operations of the Project to achieve a Sustainability Certification or other benefit to the environment, enhance the health and well-being of building occupants, or to improve energy efficiency. The Sustainable Objective is identified in the Sustainability Plan.

##### **§ 1.1.9.2 Sustainable Measure**

A Sustainable Measure is a specific design or construction element, or post occupancy use, operation, maintenance or monitoring requirement that must be completed in order to achieve the Sustainable Objective. The Owner, Architect and Contractor shall have responsibility for the Sustainable Measure(s) allocated to each of them in the Sustainability Plan.

##### **§ 1.1.9.3 Sustainability Plan**

The Sustainability Plan is prepared by the Architect and identifies and describes: the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner’s, Architect’s and Contractor’s roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project.

*(A detailed discussion of the Sustainability Plan and example of a Sustainability Plan can be found in [Chapter 9](#) and [Appendix F](#), respectively, of this Guide.)*

##### **§ 1.1.9.4 Sustainability Certification**

The Sustainability Certification is the initial third-party certification of sustainable design, construction, or environmental or energy performance, such as LEED®, Green Globes™, Energy Star® or another rating or certification system, that may be designated as the

Sustainable Objective or part of the Sustainable Objective for the Project. The term Sustainability Certification shall not apply to any recertification or certification occurring subsequent to the initial certification.

**§ 1.1.9.5 Sustainability Documentation**

The Sustainability Documentation includes all documentation related to the Sustainable Objective or to a specific Sustainable Measure that the Owner, Architect or Contractor is required to prepare in accordance with the Contract Documents. Responsibility for preparation of specific portions of the Sustainability Documentation will be allocated among the Owner, Architect and Contractor in the Sustainability Plan and may include documentation required by the Certifying Authority.

**§ 1.1.9.6 Certifying Authority**

The Certifying Authority is the entity that establishes criteria for achievement of a Sustainability Certification and is authorized to grant or deny a Sustainability Certification.

**Application of the Special Definitions to Different Sustainable Project Types**

Given the range of sustainability requirements encountered on today's projects, there will likely be three general categories of projects: those with no Sustainable Objective, those that voluntarily adopt a Sustainable Objective and those with a Sustainable Objective mandated by code or other legal requirements.

Agreements for projects with a Sustainable Objective, whether code or contract-required, can be regarded similarly. If the project is required to have a Sustainable Objective, either because of the applicable code or because the Owner has elected to pursue extensive sustainable design and construction elements, use of the Sustainable Projects documents is appropriate. Whether the Sustainable Objective is code mandated or voluntary, a Sustainability Workshop should be conducted and a Sustainability Plan approved to document the outcomes of the Sustainability Workshop. These two milestones form a roadmap for achieving the Sustainable Objective.

When using the Sustainable Projects documents, application of the Special Definitions will be different when the Sustainable Objective is code mandated than when voluntarily selected by the Owner. For example, when the Sustainable Objective is mandated by code, then the Sustainable Objective is likely to be a project designed to meet code requirements and approved by the code officials. When a Sustainable Objective is adopted voluntarily, it would be defined by the Owner, and be tied to requirements mandated by the Certifying Authority or to the Owner's other requirements.

The process described in the Sustainable Projects documents, and the Special Definitions, can be used to describe the framework and establish procedures for meeting the Sustainable Objective. Below is a brief description of how the Special Definitions for projects involving either a code-mandated or Owner developed Sustainable Objective may be viewed.

**Sustainable Measure**

- When the Sustainable Objective is based on code or other jurisdictional requirement or elective, the Sustainable Measures include the code's specific requirements and its electives; and related items required to meet those requirements and electives.

- When the Sustainable Objective is adopted voluntarily, the Sustainable Measures include the points or credits required by the Certifying Authority, or other Owner-selected requirement, and related items required to meet those requirements.

**Sustainability Plan**

- When the Sustainable Objective is based on code or other jurisdictional requirement or elective, the Sustainability Plan is based on the code's tables, elective tables and other jurisdictional requirements; and the actions required of each of the project participants to meet those requirements.
- When the Sustainable Objective is adopted voluntarily, the Sustainability Plan is based on the Certifying Authority's score or credit sheet, or the other requirements (Sustainable Measures) selected by the Owner; and the actions required of each of the project participants to meet those requirements.

**Sustainability Certification**

- When the Sustainable Objective is based on code or other jurisdictional requirement or elective, the Sustainability Certification is essentially approval by the code officials.
- When the Sustainable Objective is adopted voluntarily, the Sustainability Certification is certification by the Certifying Authority.

**Sustainability Documentation**

- When the Sustainable Objective is based on code or other jurisdictional requirement or elective, the Sustainability Documentation is the information that the code requires to be submitted to the authority having jurisdiction.
- When the Sustainable Objective is adopted voluntarily, the Sustainability Documentation is the documentation required by the Certifying Authority or Owner.

**Certifying Authority**

- When the Sustainable Objective is based on code or other jurisdictional requirement, the Certifying Authority is the authority having jurisdiction.
- When the Sustainable Objective is adopted voluntarily, the Certifying Authority is the private organization authorized to grant or deny a Sustainability Certification.

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## Chapter 2

### Background

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#### **Sustainable Design and Construction**

While sustainable design and construction practices have existed for decades, the prominence of several environmental product ratings and Sustainability Certifications, as well as, new sustainable building codes has created an increased focus on the sustainably built environment. With this focus, there has been increased attention on the new roles, responsibilities and risks encountered by those participating in sustainable projects.

Below, is a brief overview of environmental product ratings, certifications systems and jurisdictional requirements related to design and construction of sustainable projects. This overview is included to demonstrate the complexity of options and requirements that may be encountered on sustainable projects. It is this complexity, and lack of a single standard, that necessitates the use of contract documents that are specifically designed for use on sustainable projects.

#### **Environmental Product Ratings**

Over the past several decades, dozens of environmental product rating systems have been developed to identify sustainably designed, built or sourced products. These rating systems may focus on a number of key aspects of the rated product including, energy efficiency, emissions of volatile organic compounds or recycled content.

Many of the environmental product ratings systems have developed an “eco-label” that is affixed to products to identify compliance with the requirements of the rating system. One particularly prevalent example is the Energy Star label that is affixed to household appliances. However, even if a product has an eco-label or some other product certification, the Architect or the party specifying the product must research and understand the product, and the method for receiving endorsement; and also must consider whether the product will perform as intended under the operating conditions that will be encountered when installed in the project.

One of the key challenges the specifier may face when examining environmental product ratings is understanding the degree of oversight or evaluation provided prior to endorsement. A first-party endorsement is self-endorsement. This does not necessarily mean that the product does not provide the environmental benefits advertised; but an independent, outside source has not reviewed and tested the manufacturer’s claims. Many environmental product ratings may be described as second or third party certification. Second-party certification involves a consultant or trade organization that may have an interest in the entity seeking to have its products certified. Third-party certification generally involves a certifier that is wholly independent of the party seeking certification and is considered by many to be the most reliable type of certification.

In addition to carefully scrutinizing environmental product ratings, the specifier should be aware of the practice of improperly applying sustainable attributes to products or practices with the primary goal of increasing profits or market share, sometimes referred to as “green washing.” While these products or

services may be promoted to have certain sustainable attributes, the specifier should carefully investigate these products and services to ascertain the true sustainable value the product or service will provide. The Federal Trade Commission (FTC) has issued Guides for the Use of Environmental Marketing Claims, known as the Green Guides, to help marketers ensure that claims about the environmental attributes of their products and services are truthful and non-deceptive. While the Green Guides are voluntary guidelines, the FTC does have the power to prosecute false or misleading claims.

## Certification Systems

In recent years there has been tremendous growth in the number of potential certification systems that Owners may pursue on sustainable projects. Many of these certification systems provide diverse options that can be tailored to a specific project, budget and sustainable objective. These new certification systems have placed an increased focus on sustainable design and construction and the measurable benefits of sustainable practices.

In addition to environmental benefits associated with design and construction in conformance with these systems, certification also offers brand name recognition when leasing or selling space in a new project. On the other hand, many of the benefits of sustainable design and construction, including the potential for reduced energy costs, reduced environmental impact, and increased building life cycle, may be enjoyed without pursuing a specific certification system.

In considering potential certification systems or other sustainable design elements, it may be necessary to distinguish between certification and building performance. A building that has achieved a specific certification will not necessarily realize enhanced performance, and therefore may not meet an Owner's performance expectations. Conversely, a building that meets the Owner's performance expectations or incorporates sustainable design and construction elements may not be eligible for a particular certification because it may not meet all of the certification requirements. Clearly defining both the Owner's voluntary performance and certification goals, as well as any limitations to attaining those goals, is critical in setting expectations and realizing a successful sustainable project.

The AIA does not endorse any particular sustainability certification. If it is determined that pursuing a particular certification is the most appropriate option for the project, there are numerous certification systems that can be considered. In selecting a certification system, the Owner and Architect should consider the options available, the cost of third party certification, the cost of documentation and the cost of design and construction required for each. The time and effort required for sustainable design and construction, as well as the certification process and requirements, will vary by project and will be particularly affected by the local climate, site conditions and preferred architectural form, massing, project type and jurisdictional requirements.

The following is a basic summary of some common certification systems for new and existing buildings. Depending on the type of project, the requirements of each of these certification systems varies and many may have programs unique to specific project types. A more detailed explanation of each of these certification systems may be found at the respective certifying authorities' website.

**BOMA 360.** The BOMA 360 Performance Program, sponsored by the Building Owners and Managers Association International (BOMA International) evaluates buildings against industry best practices in six

major areas: building operations and management; life safety, security and risk management; training and education; energy; environmental/sustainability; and tenant relations/community involvement. Individual buildings that satisfy the requirements in all six areas are awarded the BOMA 360 designation.

**BREEAM.** Building Research Establishment Environmental Assessment Method (BREEAM) addresses environmental and sustainability issues through a scoring system based upon recognized measures of performance set against established benchmarks to evaluate a building's specification, design, construction and use. The program includes assessment of performance at the completion of construction. BREEAM, although used on some projects in the United States, is more prevalent in the United Kingdom and Europe.

BREEAM In-Use is a program to help building managers reduce operations costs and improve the environmental performance of existing buildings. It consists of an assessment methodology and an independent certification process. Like BREEAM for new construction, BREEAM In-Use is more prevalent in Europe.

**Energy Star.** Energy Star® is a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy. The program focuses exclusively on energy performance of both new and existing buildings. To qualify for ENERGY STAR, a building must earn a score of 75 or higher on the EPA's 1–100 energy performance scale, indicating that the facility performs better than at least 75% of similar buildings nationwide.

**Green Globes.** Green Globes™ is a web-based program for green building guidance and certification. The program includes an onsite assessment by a third party. Ratings are represented as quantity of “Globes” ranging from one to four Globes based on the percentage of points achieved. The Green Building Initiative administers Green Globes in the United States.

Green Globes Continual Improvement of Existing Buildings (CIEB) is a web application that aids building owners and property managers in the evaluation, documentation, and improvement of the environmental performance of their buildings. Using this tool enables building teams to focus on sustainability, gives them options when considering capital improvements or implementation of best practices, and allows them to benchmark and rate the benefits of various building attributes and procedures

**LEED.** Leadership in Energy and Environmental Design (LEED®) is a certification system that not only has different levels of certification (silver, gold, platinum) but also different requirements based on project type (new construction, core and shell, etc.). LEED also takes into consideration multiple aspects of design and construction for the whole building. Green Business Certification Inc. (GBCI) administers the LEED program.

LEED for Existing Buildings: Operations & Maintenance provides owners and operators of existing buildings an entry point into the LEED certification process and is applicable to building operations, processes, systems upgrades, minor space-use changes, and minor facility alterations or additions.

**The Living Building Challenge.** The Living Building Challenge is operated by the International Living Futures Institute and is applicable to renovations or new construction. The program is based entirely on building performance and a building must be operational for a period of 12 consecutive months prior to certification. However, a building may receive a conditional assessment prior to conclusion of the 12-month operational period. The International Living Futures Institute also provides Net Zero Energy Building Certification for buildings that have proven zero net energy consumption and zero carbon emissions.

**STARS.** Sustainability Tracking, Assessment & Rating System (STARS) was developed by the Association for the Advancement of Sustainability in Higher Education (AASHE). This certification system is for colleges and universities. STARS provides a self-reporting framework for colleges and universities to measure their performance.

### **Jurisdictional Requirements**

In addition to existing certification systems, many jurisdictions are developing their own standards for sustainable design and construction or adopting one of the existing certification systems through regulations or codes. With more and more state and local governments requiring that projects achieve specific sustainability requirements, some level of sustainable design and construction will become increasingly prevalent in the industry. Often, these new laws are unclear as to the exact penalty for failure to achieve or comply with the law's requirements. They may also require bonds or other obligations not readily available in the market. Some of the major codes and other jurisdictional requirements are summarized below:

**Standard 189.1.** In an effort to establish minimum sustainable criteria for incorporation into building codes, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) in conjunction with the Illuminating Engineering Society (IES) and United States Green Building Council (USGBC) developed ANSI/ASHRAE/USGBC/IES Standard 189.1, Standard for the Design of High-Performance Green Buildings Except Low-Rise Residential Buildings (Standard 189.1). Standard 189.1 is applicable to all buildings except low rise residential buildings and covers site sustainability, water use efficiency, energy efficiency, indoor environmental quality and the building's impact on the atmosphere or natural resources. Standard 189.1 can be voluntarily applied to a project; but is not mandatory unless adopted as code in the jurisdiction where the project is located.

**IgCC.** The International green Construction Code (IgCC), developed by the International Code Council (ICC), and published in 2012, adds "green" provisions to existing codes, such as the International Building Code (IBC), International Energy Conservation Code (IECC) and the other "I-Codes." It covers natural resources, water and energy conservation, operations and maintenance for new and existing buildings, building sites, building materials, and building components (including equipment and systems). Like other ICC codes, it is anticipated that it will be updated and released on a three-year cycle.

When adopted by a jurisdiction, the IgCC will likely affect the design team's scope of services and will influence the applicable standard of care; its provisions may also impose new requirements on Owners. These new requirements may result in the need for new consultants or an increase in the level of services required of the design team. These nuances can only be discovered by thoroughly reading the code and understanding what each provision's impact will be.

In jurisdictions where it has not been adopted, Owners may seek to incorporate provisions of the IgCC through their design and construction contracts, which, again, will affect the design team's scope of services and the applicable standard of care. Incorporating the code by contract will present a number of challenges, and the parties to such a contract will need to be extremely careful. Among other things, the IgCC allows for the selection of jurisdiction-specific requirements and project-specific electives. Care must be taken to ensure that a contract, seeking to adopt the IgCC by reference, addresses those provisions normally dealt with as part of the code adoption and enforcement process. Failure to address such details, and any other issues required to be addressed as part of the code adoption process, may lead to contract ambiguity and dispute.

Because the Sustainable Projects documents have been drafted with these issues in mind, they are likely the best place to begin when the IgCC is applicable to your project. These Documents have been drafted to allocate duties and risks to the party that is best able to manage them and provide a framework for the Architect to develop a Sustainability Plan that efficiently allocates the requirements of the IgCC to the appropriate party.

**Local Codes.** In addition to the IgCC, many jurisdictions are developing their own standards for sustainable design and construction or adopting one of the existing certification systems through regulations or codes. These new standards can be comprehensive codes drafted by the jurisdiction, like the CALGreen Code, or they can adopt an existing certification system, like the D.C. Green Building Act. It is important that each of the project participants understands the codes and requirements applicable in the jurisdiction where the project is located.

**Jurisdictional Incentives.** In addition to jurisdictional or governmental requirements that create additional sustainable criteria for projects, many jurisdictions and the federal government are offering incentives for projects that incorporate sustainable design and construction measures. Incentives may include expedited permitting; tax rebates, deductions and credits, such as the IRS Section 179D deduction for Energy Efficient Buildings; or other financial or project incentives. Some incentives are available exclusively to the Owner while others are available directly to the Architect or Contractor. These incentives, while beneficial to the project or the party receiving the incentive, may create the potential for significant damages to other parties on the project if a requirement for receiving the incentive is not achieved.

**Other Governmental Requirements.** Although not technically jurisdictional requirements, some governmental entities, in their role as Owners, have specific sustainability requirements. For example, the U.S. General Services Administration (GSA), an independent agency of the United States government and one of the largest land owners and managers in the nation, has required that all of its new construction and major modernization projects achieve LEED certification. One of the GSA's key roles is the design, construction, operation and maintenance of federal facilities, including courthouses, office buildings, land ports of entry and research facilities.

## **Conclusion**

As stated previously, continued development in the field of sustainable design and construction will create a diverse and often confusing set of competing certifications, standards, and codes that may be applicable to sustainable design and construction projects. In order to establish a clear understanding of what is, and what is not, required on a sustainable project, the project participants can no longer rely on contracts that do not address these issues. Sustainable projects require contract documents that are specifically tailored to sustainable projects and that provide a clear process for establishing the sustainability requirements for the project. The AIA Sustainable Projects documents, outlined below, include key modifications to standard AIA Contract Documents that will allow the parties to clearly establish the Owner's sustainability goal for the project and establish clear lines of responsibility for achieving that goal.

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## Chapter 3

### B101–2007 SP, Agreement Between Owner and Architect

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For easy reference, the following sections are coordinated with the article and section numbers found in AIA Document B101™–2007 SP. However, the information included below is generally applicable to agreements used for sustainable design and construction. With careful review and coordination, the contract language cited in this Guide may also be applied in the use of other AIA agreements. *Note that the discussion and language included below incorporates the Special Definitions included in [Chapter 1](#) of this Guide.*

This Guide emphasizes the role the Architect plays in educating Owners and establishing reasonable expectations regarding sustainable design early in the Project. The language emphasizes that the Architect will design the building with the intention of having the Project meet the specified Sustainable Objective, but recognizes that the construction, operation and maintenance of the building, as well as interpretations by the Certifying Authority or authorities having jurisdiction over the Project, are beyond the Architect’s control.

#### Initial Information

In AIA Document B101–2007, the parties are prompted to provide initial information setting forth, among other things, the Owner’s assumptions and expectations regarding key Project parameters. The Architect’s services and corresponding compensation are based on the initial information provided by the Owner. On a sustainable project, the parties may want to include specific information about the Owner’s assumptions and expectations related to the Sustainable Objective or Sustainable Measures contemplated for the Project. If, when later developing the Sustainability Plan, the Sustainable Objective changes and causes an increase in the Architect’s services beyond those required by the Sustainable Objective set forth in the initial information, the Architect may be entitled to additional compensation.

#### **B101 SP ARTICLE 1, INITIAL INFORMATION**

**§ 1.1** This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:  
*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project’s site and program, Owner’s contractors and consultants, Architect’s consultants, Owner’s budget for the Cost of the Work, authorized representatives, anticipated procurement method, anticipated Sustainable Objective, incentive programs the Owner intends to pursue, and other information relevant to the Project.)*

AIA Document A201™–2007 SP, Section 9.8.1, defines Substantial Completion as “the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.” On a sustainable project, in which the Owner is seeking to achieve a Sustainability Certification, the date of Substantial Completion is not the same as the date of award of the Sustainability Certification; the Sustainability Certification may be issued some time later than Substantial Completion. Accordingly, language was included in B101–2007 SP Section 1.2 to clarify that Substantial Completion, for purposes of B101–2007 SP, is as defined in [Section 9.8.1 of AIA Document A201–2007 SP](#).

**B101 SP ARTICLE 1, INITIAL INFORMATION**

§ 1.2 The Owner’s anticipated dates for commencement of construction, and Substantial Completion of the Work as defined in Section 9.8.1 of AIA Document A201™–2007 SP, are set forth below:

- .1 Commencement of construction date:
- .2 Substantial Completion date:

**Standard of Care**

In 2007, the AIA included a new provision in its standard Owner/Architect Agreements that sets forth the standard of care generally applicable to the Architect’s services. This language was added by the AIA so that the parties to the Owner/Architect agreement would not, without discussion or negotiation, insert a standard of care provision that is different than the common law standard of care. This standard of care, as set forth in B101–2007 SP Section 2.2, is as follows:

**B101 SP ARTICLE 2, ARCHITECT’S RESPONSIBILITIES**

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

Unless this provision is subsequently modified by the parties, this is the standard by which the Architect’s performance will be evaluated in any legal proceeding. Accordingly, Owners and Architects should recognize and understand this standard of care. Owners and Architects should also be aware that modifications to this contractual standard of care language could have consequences from both a legal liability perspective and an insurance coverage perspective. Liability to the Owner or others based on heightened standard of care language (e.g., “the Architect shall perform its services consistent with the highest and best professional care . . .”, or “the Architect shall perform its services consistent with highly experienced green building or sustainable design professionals . . .”, etc.) may not be covered by the Architect’s professional liability insurance. Both Owners and Architects should exercise caution before altering or amending this standard of care language, and legal counsel should be consulted in order to discuss the potential effects of any such modifications. In the event of a dispute under the standard of care language set forth in AIA Document B101–2007 SP, the Architect’s services will be evaluated in comparison to services provided by the Architect’s peers performing in the same or similar locality under the same or similar circumstances. The Architect must understand the customs and practices of, and standards applied by, other Architects on similar projects in that locality and perform its professional services accordingly.

Furthermore, as more jurisdictions institute green building standards by code, the Architect’s standard of care may include requirements established by newly adopted code or practice. In other words, “standard of care” is an evolving concept; as design professionals begin incorporating sustainable design practices (either voluntarily or through jurisdictional requirements), the Architect’s standard of care may eventually be construed to include those sustainable design practices as the accepted baseline standard of performance for the Architect. Even in jurisdictions where the IgCC is not officially adopted, professional practices initially adopted to comply with the IgCC may become part of the general practice of architecture or engineering on a local, regional, or national level and thereby influence the standard of care.

In addition to industry changes or code requirements that may change the Architect’s base line standard of care, the Architect may inadvertently assume greater obligations or liabilities by including contractual assurance provisions such as warranties or guarantees that a specific Sustainable Objective will be achieved. Because “guarantees” and “warranties” are often excluded from coverage under professional liability insurance policies, a non-negligent failure to achieve a contractually guaranteed Sustainable Objective may not be covered by the Architect’s professional liability insurance and accordingly should be avoided. (See the discussion on [guarantees of performance](#) below.)

### Scope of Architect’s Basic Services and Sustainability Services

D503–2011 suggested that, when modifying the standard AIA Owner/Architect agreements, the Architect’s Sustainability Services would be treated as Additional Services. However, because the SP documents were developed specifically for use on projects intended, from the outset, to include significant sustainable design and construction elements, it did not seem appropriate to treat the Sustainability Services as Additional Services. Accordingly, under B101–2007 SP, the Architect’s Sustainability Services are included as part of Basic Services. B101–2007 SP includes a new Section 3.3 that outlines the Architect’s Sustainability Services. A new Section 3.1 was added to alert users to the fact that Section 3.3 includes the Architect’s Sustainability Services.

#### **B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.1** The Architect’s Basic Services consist of those described in [Article 3 Sections 3.1 and 3.2](#) and include usual and customary structural, mechanical, and electrical engineering services. [The Architect’s Sustainability Services consist of those described in Section 3.3.](#) Services not set forth in Article 3 are Additional Services.

**Materials or Equipment Substitutions.** Sustainable projects require careful selection of building materials and equipment. Often, the Architect will select specific materials or equipment necessary to achieve the Sustainability Certification or otherwise necessary for the Sustainable Objective. Substitutions that fail to conform to the specific requirements of the Architect specified materials and equipment could prevent a Project from achieving the Sustainable Objective. It is, therefore, critical that each substitution be carefully considered in light of the impact it may have on achieving the Sustainable Objective. For further discussion of the substitution issue, including additional Contractor obligations, see [Chapter 4](#) of this Guide.

**Scope of Architect’s Basic Services.** While every attempt was made to include all of the Architect’s Sustainability Services under Section 3.3, it was necessary to modify certain provisions of Section 3.2 to address specific aspects of the Sustainability Services. Many of these changes are minor, but necessary to form a narrative of the iterative development of the Sustainability Plan. Each of the changes is detailed below.

Because the Architect will be performing the Sustainability Services under B101–2007 SP, the language in this section requiring that the Architect present an evaluation of the feasibility of incorporating environmentally responsible design approaches has been deleted.

#### **B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.2.1.3** The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, ~~including the feasibility of incorporating environmentally responsible design approaches.~~ The Architect shall reach an understanding with the Owner regarding the requirements of the Project.



Additionally, Section 3.2.1.5.1 has been modified to recognize that the Architect’s consideration of environmentally responsible design alternatives is performed as part of the Architect’s Sustainability Services under Section 3.3.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.2.1.5.1** In providing the Sustainability Services under Section 3.3, the Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner’s program, schedule and budget for the Cost of the Work. ~~The Owner may obtain other environmentally responsible design services under Article 4.~~

Section 3.2.1.7 has been modified to require that the Architect submit the Sustainability Plan to the Owner for approval along with the Schematic Design Documents.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.2.1.7** The Architect shall submit the Schematic Design Documents, and the Sustainability Plan prepared in accordance with Section 3.3.4.1, to the Owner, and request the Owner’s approval.

The Owner’s approval of the Sustainability Plan during the Schematic Design phase is an important first step in cementing the roles and responsibilities of the parties with respect to achieving the Sustainable Objective. The approved Sustainability Plan will influence the further development of the Schematic Design Documents through the Design Development Phase.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.2.2.1** Based on the Owner’s approval of the Schematic Design Documents and the Sustainability Plan, and on the Owner’s authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner’s approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

As the design process progresses and the Drawings and Specifications become more detailed, it may be necessary to adjust certain aspects of the Sustainability Plan. The Architect is required to update the Owner on any adjustment to the Sustainability Plan when submitting Design Development Documents.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.2.2.3** The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work or the Sustainability Plan, and request the Owner’s approval.

Development of the Sustainability Plan, including the Owner’s approval, will establish the Sustainable Measures for the Project and establish key areas of responsibility for each of the Project participants. The

approved Sustainability Plan becomes part of the Contract Documents, and elements of the Sustainability Plan will be reflected in the drawings and specifications.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.2.3.1** Based on the Owner’s approval of the Design Development Documents, and on the Owner’s authorization of any adjustments in the Project requirements ~~and~~, the budget for the Cost of the Work and the Sustainability Plan, the Architect shall prepare Construction Documents for the Owner’s approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with ~~Section 3.6.4~~ Section 3.2.5.4.

**§ 3.2.3.3** During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; ~~and~~ (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions); and (4) the Sustainability Plan. The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

The Architect will again notify the Owner of any adjustments to the Sustainability Plan and seek the Owner’s approval concurrent with its submission of the Construction Documents.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.2.3.5** The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work or the Sustainability Plan, take any action required under Section 6.5, and request the Owner’s approval.

### Construction Phase Services

**Project Completion.** As noted in the discussion of the Initial Information, Substantial Completion and the award of a Sustainability Certification are not likely to occur at the same time. The award of a Sustainability Certification typically will be some time later than the date of Substantial Completion. Because Substantial Completion triggers the release of retainage and the beginning of the Contractor’s warranties and corrections period, the Architect should discuss Section 3.2.5.6.1 with the Owner to be sure the Owner understands that these items are triggered by Substantial Completion and not necessarily by award of the Sustainability Certification, or verification that the Sustainable Objective was met.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.2.5.6.1 . . .** Verification that the Project has achieved the Sustainable Objective, or the actual achievement of the Sustainable Objective, shall not be a condition precedent to the Architect’s issuance of a Certificate of Substantial Completion.

Under A201–2007 SP, the Contractor is required to submit all of its Sustainability Documentation to the Architect as a condition of Substantial Completion; unless a portion of the Sustainability Documentation, by its nature, cannot be provided until after Substantial Completion. Sustainability Documentation to be

provided after Substantial Completion might include the results of commissioning, certain systems testing, or some other requirement that cannot be tested or verified until the building is occupied. Section 3.2.5.6.4 excludes post Substantial Completion Sustainability Documentation from the items that the Architect must provide the Owner as part of Project completion.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.2.5.6.4** The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents, except for Sustainability Documentation which by its nature must be completed after Substantial Completion.

### Sustainability Services

As discussed previously, B101–2007 SP treats the Sustainability Services as Basic Services. Where the parties have selected the Sustainable Projects documents as the basis of contract negotiations, the parties are aware that the Sustainability Services are part of the Project and these services would not be considered Additional Services. It should be noted, however, that the Sustainability Services are subject to a separate compensation provision under Article 11 of B101–2007 SP if the parties elect to use this provision.

Even where a jurisdiction may require a specific Sustainability Certification or compliance with a sustainability-related code, it is still important to define how the Sustainability Plan will be developed, who will perform the Sustainable Measures, who will register the Project with the Certifying Authority and who will submit documents to the Certifying Authority. For this reason, the Sustainable Projects documents are appropriate and beneficial even where the sustainable elements of the Project are defined by code. (See, for example, the discussion in [Chapter 1](#).)

**Scope of Architect’s Sustainability Services.** In performing the Sustainability Services, the Architect will develop a clear understanding with the Owner regarding the complete scope of the Architect’s services. The Sustainability Services outlined below establish a process to: (1) determine the Owner’s Sustainable Objective; (2) develop a Sustainability Plan outlining the Sustainable Measures necessary to achieve the Sustainable Objective; (3) designate responsibility for each Sustainable Measure; and (4) incorporate the Sustainable Measures included in the Sustainability Plan into the drawings and specifications for the Project.

This scope of services is meant to be flexible and may be used on many types of sustainable projects. For example, this scope of services could be used on a Project where the Sustainable Objective is 75% energy savings, compared to a referenced benchmark, or a Project where the Sustainable Objective is both 75% energy savings and some third party rating or certification. The level of service can be specifically tailored to the Owner’s requirements and budget.

The Sustainability Services are included in Section 3.3, rather than incorporated with the other Basic Services, to provide a single point of reference for those services that are unique to sustainable projects. This can be used as a starting point for discussions with the Owner regarding the services performed by the Architect on a sustainable project and the additional commitment required of the Owner. While these services are broken out into a separate section, the services will be performed alongside and in conjunction with the other Basic Service performed by the Architect.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3 Scope of Architect’s Sustainability Services**

**§ 3.3.1** In conjunction with the services described in Sections 3.1 and 3.2, the Architect shall provide the Sustainability Services described in this Section 3.3.

**Sustainability Certification Agreements.** Many Sustainability Certifications require that the user register the Project with and provide submissions to the Certifying Authority through the use of an online tool. Often, the Certifying Authority may require the user of the online tool to enter into certain agreements with the Certifying Authority as part of the registration process. These agreements may be “click through” agreements that are displayed on screen as part of the registration process. These agreements can create significant legal and performance obligations for the party registering the Project. The Owner should be aware of the requirements of these agreements and be willing to recognize, through a written agreement, that the party registering the Project is doing so on the Owner’s behalf as an agent of the Owner. However, laws regarding the establishment and enforcement of an agency relationship may vary from jurisdiction to jurisdiction, and should be reviewed with appropriate legal counsel. Additional information on this subject can be found under [Chapter 5](#) of this Guide as it specifically relates to LEED Certification.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3.2 Sustainability Certification Agreements**

If the anticipated Sustainable Objective set forth in the Initial Information includes a Sustainability Certification, the Architect shall provide the Owner with copies of all agreements required by the Certifying Authority to register the Project and pursue the Sustainability Certification. The Owner and Architect will review and confirm that the terms of those agreements are acceptable to the Owner before moving forward with the Sustainability Services under Section 3.3. The Owner agrees to execute all documents required by the Certifying Authority to be executed by the Owner, including any documentation required to establish the authority of the Architect as an agent of the Owner for the limited purpose of pursuing the Sustainability Certification.

**Sustainability Workshop.** Fundamental to the success of sustainable projects is the development of a clear understanding of the Owner’s goals and expectations for the Project. The Sustainability Workshop allows the Architect, Owner and other participants to meet prior to the conclusion of the Schematic Design Phase of the Project to confirm the Sustainable Objective and establish the goals and expectations for the Sustainable Measures that will be incorporated into the Project. During the Sustainability Workshop, the Project participants should discuss the Owner’s intended use of the Project and potential Sustainable Measures that would allow the Owner to achieve its goals for the Project. In addition, the Architect may provide advice to the Owner regarding the feasibility of, or budget impacts arising from, the potential incorporation of Sustainable Measures, or necessary implementation procedures. The Owner and Architect may also discuss the potential post-construction impact the Sustainable Measures may have on the completed Project such as building operations or maintenance procedures.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3.3 Sustainability Workshop**

No later than the conclusion of the Schematic Design Phase Services, the Architect shall conduct a Sustainability Workshop with the Owner and, as requested by the Architect, with the Owner’s consultants and the Architect’s consultants, during which the participants will: review and discuss potential Sustainable Measures to be targeted; examine strategies for

implementation of the Sustainable Measures; and discuss the potential impact of the Sustainable Measures on the Project schedule and the Owner’s program and budget.

It should be noted that the language above states that the Sustainability Workshop will occur no later than the conclusion of the Schematic Design Phase Services. This language was included because the Sustainability Workshop should occur during the very early stages of the Project. Remember, when scheduling the Sustainability Workshop, that the Sustainability Plan is required to be submitted to and approved by the Owner with the Schematic Design Documents. Holding the Sustainability Workshop late in the Schematic Design Phase may not give adequate time to prepare the Sustainability Plan.

**Sustainability Plan.** Section 3.3.4 of B101–2007 SP requires that, following the Sustainability Workshop, the Architect develop a Sustainability Plan based on the Sustainable Objective. The Sustainability Plan identifies the Sustainable Measures; and may take the form of a spreadsheet outlining each of the Sustainable Measures targeted and allocating responsibility for that measure to one or more of the Project participants. [Chapter 9](#) of this Guide includes a more detailed discussion about development of the Sustainability Plan, and an example of a Sustainability Plan is included in [Appendix F](#). The Sustainability Plan is not intended to be aspirational in nature, but rather a road map for achieving the Sustainable Objective that clearly outlines the Sustainable Measures and who is responsible for achieving them. When developing the Sustainability Plan, the parties should consider how achievement of each Sustainable Measure is going to be verified. The Sustainability Plan can be used to establish performance parameters that will demonstrate achievement of each Sustainable Measure, the types of testing necessary, and the party responsible for verification that those performance parameters have been met. Including a clear methodology in the Sustainability Plan for verifying that the Sustainable Measures have been achieved will clarify each party’s responsibility for a particular Sustainable Measure and may lead to fewer claims on the Project.

Upon completion of the Sustainability Plan, the Architect will submit the Sustainability Plan to the Owner for approval. During the design phase, the Sustainable Measures included in the Sustainability Plan should be incorporated into the drawings and specifications, as appropriate, and will form part of the basis for the bidding or negotiation of the Owner/Contractor Agreement. Additionally, the Sustainability Plan may be bound into the specifications for the Project and will become a [Contract Document upon which the Contractor’s Work will be based](#). Once the Owner and Architect have agreed to the Sustainability Plan, it may be prudent for each party to acknowledge that agreement in writing. This can avoid confusion and minimize disputes later, as the parties have a clear record of their agreement.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3.4 Sustainability Plan Services**

**§ 3.3.4.1** Following the Sustainability Workshop, the Architect shall prepare a Sustainability Plan based on the Sustainable Objective and targeted Sustainable Measures.

The Sustainability Plan may allocate responsibility for certain Sustainable Measures to the Architect. This new provision requires the Architect to perform the Sustainable Measures identified as its responsibility.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3.4.2** The Architect shall perform those Sustainable Measures identified as the responsibility of the Architect in the approved Sustainability Plan. If the Sustainability Plan requires the Architect to provide services beyond those based on the Initial Information, those services shall be provided pursuant to Section 4.3.1.1.

The Sustainability Plan may require adjustment as the design and construction of the Project progresses. The Architect is required to revise the Sustainability Plan based on changes approved by the Owner.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3.4.3** Subject to Section 4.3.3, the Architect shall make adjustments to the Sustainability Plan as the design and construction of the Project progresses to reflect any approved changes.

**Design Phase.** The Architect, as part of the design phase for the Project, will incorporate the Sustainable Measures for the Project, identified in the Sustainability Plan, into the drawings and specifications as appropriate. This may require information in the drawings and specifications, such as specific performance criteria or other required characteristics of materials or equipment. MasterSpec has developed comprehensive green, sustainable, and LEED language that can assist in the development of specifications for sustainable Projects. (For more information about MasterSpec, go to [www.masterspec.com](http://www.masterspec.com).)

In preparing specifications, the Architect should carefully consider, and be prepared to explain, the effect the Sustainable Measures will have on building systems and other aspects of the Project; how those building systems are intended to be operated in accordance with the design parameters; and the impact on building use and occupancy resulting from the utilization of Sustainable Measures. Identification of how the performance criteria or other required characteristic contributes to attaining a Sustainable Measure will provide guidance for substitution requests (see [Substitutions](#) in Chapter 6, below.) and assist the Owner in understanding how to operate the systems in accordance with the design parameters required to meet a Sustainable Measure or the Sustainable Objective.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3.5 Design Phase**

**§ 3.3.5.1** The Architect shall prepare Schematic Design Documents, Design Development Documents and Construction Documents that incorporate the Sustainable Measures identified in the Sustainability Plan, as appropriate.

**Untested Materials and Equipment.** The Owner’s Sustainable Objective or other Project requirements may warrant the use of untested materials and equipment on the Project. The Architect or its consultants may be unable to confirm a track record of reliability for the materials or equipment. If the materials or equipment fail to perform in accordance with the manufacturer’s representations, the Project may fail to achieve the Sustainable Objective. Furthermore, Architects should avoid making selections based solely on [environmental product ratings](#) because environmental product ratings can prove to be unreliable. The Architect will discuss untested products with the Owner and inform the Owner of any potential impact on the Sustainable Objective that may occur if the product fails to meet the manufacturer’s representations. If, after discussions with the Architect about the potential impacts on the Sustainable Objective, the Owner chooses to use the product, the language included as Section 3.3.5.2 below may limit the Architect’s liability for a failure of the product to perform in accordance with the manufacturer’s representations.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3.5.2** As part of the Sustainable Measures, the Project may require the use of materials and equipment that have had limited testing or verification of performance. The Architect may be unable to determine that the materials or equipment will perform as represented by the manufacturer. The Architect will discuss with the Owner the proposed use of such materials or equipment and discuss potential effects on the Sustainable Objective that may

occur if the materials or equipment fail to perform in accordance with the manufacturer's or supplier's representation. The Owner will render a decision regarding the use of such materials or equipment in a timely manner. In the event the Owner elects to proceed with the use of such materials or equipment, the Architect shall be permitted to rely on the manufacturers' or suppliers' representations and shall not be responsible for any damages arising from failure of the material or equipment to perform in accordance with the manufacturer's or supplier's representations.

The Architect has a duty to keep the Owner apprised of the Project's progress toward achievement of the Sustainable Measures and any defects or deficiencies in the Work that the Architect recognizes will impact achievement of the Sustainable Measures. If such a condition is recognized, the Owner, Architect and Contractor are required to meet to discuss alternatives to remedy the condition.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT'S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3.6 Construction Phase**

**§ 3.3.6.1** The Architect shall advise and consult with the Owner regarding the progress of the Project toward achievement of the Sustainable Measures. Based on site visits performed in accordance with Section 3.2.5.2.1 and other information received from the Contractor, the Architect shall promptly notify the Owner of known deviations from the Contract Documents and defects or deficiencies in the Work that the Architect recognizes will impact achievement of Sustainable Measures. The Architect shall meet with the Owner and Contractor to discuss alternatives to remedy the condition.

Because of the significant impact a change could have on achievement of the Sustainable Measures or the Sustainable Objective, the Architect is required to notify the Owner of proposed changes that will materially affect achievement of a Sustainable Measure or the Sustainable Objective. The Owner may then authorize the Architect to further investigate the change and provide recommendations regarding the proposed change.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT'S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3.6.2** If the Architect determines that implementation of a proposed change in the Work would materially impact a Sustainable Measure or the Sustainable Objective, the Architect shall notify the Owner, who may authorize further investigation of such change.

Under A201–2007 SP, the Contractor is required to provide, in connection with any substitution request, a representation describing how the substitution may affect achievement of a Sustainable Measure. In order to make this representation, the Contractor may need to request additional information from the Architect describing how, if at all, a product, material or equipment was intended to satisfy the requirements of a Sustainable Measure or the Sustainable Objective. Section 3.3.6.3 requires the Architect to provide this information to the Contractor.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT'S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3.6.3** Subject to Section 4.3.2.2, the Architect shall provide responses to the Contractor's request for information to describe how a product, material or equipment was intended to satisfy the requirements of a Sustainable Measure or contribute toward achievement of the Sustainable Objective.

**Sustainability Certifications.** The scope of Sustainability Services set forth in B101–2007 SP may be used on Projects where the Owner seeks to incorporate performance-based Sustainable Measures, where

sustainable design and construction measures are required by code or other legal requirement, and also on Projects where the Owner seeks a Sustainability Certification.

Where a Sustainability Certification is sought, Section 3.3.7 sets forth specific services the Architect will perform. The Architect will register the Project; collect the Sustainability Documentation and submit the Sustainability Documentation to the Certifying Authority; and prepare and submit the application for certification to the Certifying Authority. The Architect will perform each of these services as an agent for the Owner. An agency relationship creates certain legal rights that may differ based on the jurisdiction where the Project is located. Users of B101–2007 SP are urged to consult with an attorney regarding the specific legal implications of this relationship.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3.7 Project Registration and Submissions of Sustainability Documentation to the Certifying Authority**

**§ 3.3.7.1** If the Sustainable Objective includes a Sustainability Certification, the Architect, as agent for the Owner, shall perform the services set forth in this Section 3.3.7.

Under B101–2007 SP, the Architect will register the Project with the Certifying Authority. As discussed previously, this can have important legal implications for the Architect that should be considered. Additionally, the fees charged by the Certifying Authority can be a significant Project expense. Under Section 3.3.7.2, the Architect will pay these fees as a reimbursable expense. However, the Owner and Architect may negotiate an initial payment under Section 11.11.1.1 to cover these expenses.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3.7.2** The Architect shall register the Project with the Certifying Authority. Registration fees and any other fees charged by the Certifying Authority, and paid by the Architect, shall be a reimbursable expense under Section 11.9.1 of this Agreement and shall be credited against any initial payment received pursuant to Section 11.11.1.1.

In addition to registration, the Architect is required to collect Sustainability Documentation from the party responsible for producing it in accordance with the Sustainability Plan, and submit the Sustainability Documentation to the Certifying Authority. This does not mean that the Architect is responsible for preparation of all of the Sustainability Documentation. The Architect is acting as an aggregator of the Sustainability Documentation. Submissions beyond the limitations set forth in Section 4.3.3 will be compensated as Additional Services.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3.7.3** The Architect shall collect the Sustainability Documentation from the Owner and Contractor; organize and manage the Sustainability Documentation; and, subject to Section 4.3.3, submit the Sustainability Documentation to the Certifying Authority as required for the Sustainability Certification process.

In some circumstances, the Certifying Authority may have a process to appeal an adverse credit or point ruling. Provided the Architect has received timely notice of denial of a credit or point necessary to achieve the Sustainability Certification, the Architect will prepare and file the appeal of the credit or point ruling to the Certifying Authority. Appeals to the Certifying Authority are performed as part of the Architect’s Basic Services subject to a limitation on the number of appeals under Section 4.3.3. Any appeals in excess of the number set in section 4.3.3 will be compensated as an Additional Service. In addition, it should be noted that the Architect’s obligation under Section 3.3.7.4 does not extend to prosecuting appeals to the



Certifying Authority, or taking any other actions determined by the Owner to be necessary or desirable, arising from the revocation or reduction of an awarded Sustainability Certification.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3.7.4** Subject to Section 4.3.3, and provided the Architect receives timely notice from the Owner or Certifying Authority, the Architect shall prepare and file necessary documentation with the Certifying Authority to appeal a ruling or other interpretation denying a requirement, prerequisite, credit or point necessary to achieve the Sustainability Certification.

Finally, the Architect is required to prepare and submit the application for certification to the Certifying Authority.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3.7.5** Subject to Section 4.3.3, the Architect shall prepare and submit the application for certification of the Project to the Certifying Authority, including any required supporting documentation, in accordance with the Sustainability Plan.

In some cases, the Certifying Authority may respond to a certification request with additional comments, questions or a request for additional documentation. Language has also been included requiring the Architect to prepare responses and submit additional documentation required by comments or questions received from the Certifying Authority, subject to the limitations set forth in Section 4.3.3.

**§ 3.3.7.6** Subject to Section 4.3.3, the Architect shall prepare responses to, and submit additional documentation required by, comments or questions received from the Certifying Authority.

Some Certifying Authorities may have a process that will allow certain credits or points to be met without further inspection from the Certifying Authority. This process will often require that the Architect certify that the requirements of the point or credit have been met. Language has been included stating that any certification, declaration or affirmation the Architect makes to the Certifying Authority as part of registration or the certification process does not create a warranty or guaranty to the Owner. This is to avoid creating a potentially uninsurable contractual warranty or guarantee to the Owner.

**B101 SP ARTICLE 3, SCOPE OF ARCHITECT’S SERVICES AND SUSTAINABILITY SERVICES**

**§ 3.3.7.7** Any certification, declaration or affirmation the Architect makes to the Certifying Authority shall not constitute a warranty or guarantee to the Owner or the Owner’s contractors or consultants.

### **Commissioning (B211–2007)**

Building commissioning is a requirement of the IgCC and may be a requirement of Sustainability Certifications and other ordinances and laws. Building commissioning is a process that verifies that key systems in a new building perform in accordance with the Owner’s requirements, as well as with applicable certification requirements, and are consistent with the design requirements. Key to the commissioning process is the establishment of performance criteria for the systems to be commissioned. The ability to demonstrate, through measurable and objective testing, that the systems actually perform in accordance with this criteria is a key benefit of commissioning. In addition, commissioning should include operator systems training that addresses not only proper operation and maintenance of the systems, but also demonstrates the purpose of the system, special design features, operating sequences, and any limitations of the system. Commissioning may also include a follow up meeting with the Owner, typically one year

following Substantial Completion of the Project, to review specific systems and to provide additional recommendations on the operation and performance of commissioned systems.

**B101 SP ARTICLE 4, ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services or Sustainability Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2~~Section 11.3~~.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
Additional Services § 4.1.22 Commissioning (B211™–2007)		

AIA Document B211™–2007, Standard Form of Architect’s Services: Commissioning, provides a scope of services for commissioning that requires the Architect, based on the Owner’s approval of systems to be commissioned, to develop a commissioning plan, a design intent document, and commissioning specifications. It also requires that the Architect review the Contractor’s submittals and other documentation related to the systems to be commissioned, observe and document performance tests, train operators, and prepare a final commissioning report.

It should be noted that in some instances it may not be appropriate for the Architect to perform commissioning of the Project. LEED, for example, permits the Architect to perform the prerequisite “Fundamental Commissioning” but requires an independent agent that may be contracted by the Architect to perform “Enhanced Commissioning.” Local law or Owner preference may also prevent the Architect from performing commissioning of the Project.

Where the Architect is permitted to perform commissioning, such as under the IgCC, the Architect’s performance of commissioning can be beneficial for a variety of reasons. Commissioning allows the Architect to play a key role in verifying that the systems in the Project are performing in the manner the Architect intended. It should be noted that commissioning can extend the Architect’s services well beyond Final Completion of the Project. The IgCC for example utilizes a minimum twelve month commissioning period to evaluate the performance of the system and to make adjustments.

Despite the benefits of the Architect performing commissioning, B101–2007 SP, Section 5.17, does not assume that the Architect will provide commissioning. Rather, the Owner is required to provide a commissioning agent for the Project unless otherwise agreed by the Architect. This allows the parties to independently determine if the Architect is the most appropriate party to perform commissioning. If the Owner does hire the Architect to commission the Project, B211–2007 can be used as the Architect’s scope of services.

**Limitations on Sustainable Services**

**Changes to the Sustainability Plan or Instruments of Service.** The requirements for a specific Sustainability Certification may change during the course of the Project. When a Sustainability Certification is selected for the Project, clearly identify the version of the Sustainability Certification applicable to the Project in the

Sustainability Plan. Some Sustainability Certifications may allow you to “lock in” a particular version of the certification system when you register the Project. If the requirements to achieve the Sustainability Certification change during the course of the Project, the Architect may need to perform significant additional work to revise the plans and specifications for the Project to meet the new requirements. Section 4.3.1 has been revised to add two new potential Additional Services that may arise during the course of the Project. Section 4.3.1.11 adds changing or editing previously prepared Instruments of Service, including the Sustainability Plan, necessitated by changes in the requirements to achieve the Sustainability Certification for the Project. Section 4.3.1.12 adds assisting the Owner or Contractor with the preparation of the Sustainability Documentation for which the Owner or Contractor is responsible under the Sustainability Plan.

#### **B101 SP ARTICLE 4, ADDITIONAL SERVICES**

**§ 4.3.1** Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner’s written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner’s schedule or budget for Cost of the Work, or procurement or delivery method;
- ~~.2 Services necessitated by the Owner’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;~~
- .2 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .3 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner’s consultants or contractors;
- .4 Preparing digital data for transmission to the Owner’s consultants and contractors, or to other Owner authorized recipients;
- .5 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .6 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .7 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .8 Evaluation of the qualifications of bidders or persons providing proposals;
- .9 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- .10 Assistance to the Initial Decision Maker, if other than the Architect;
- .11 Changing or editing previously prepared Instruments of Service, including the Sustainability Plan, necessitated by the Certifying Authority’s changes in the requirements necessary to achieve the Sustainability Certification; or
- .12 Assistance to the Owner or Contractor with preparation of Sustainability Documentation for which the Owner or Contractor is responsible pursuant to the Sustainability Plan.

The Architect should clearly define the scope of the Architect’s sustainable design and construction phase services. Throughout the design and construction of the Project, it may be necessary to perform multiple revisions to the Sustainability Plan or make multiple submittals to the Certifying Authority. These services may not be contemplated as part of the scope of the Architect’s Sustainability Services and could require a significant expenditure of resources or funds; especially on Projects where the Sustainability Services are being performed on a fixed fee basis. The Architect might consider placing limitations on certain services which, if exceeded, would be compensated as an Additional Service.

**B101 SP ARTICLE 4, ADDITIONAL SERVICES**

**§ 4.3.3** The Architect shall provide ~~Construction Phase~~ services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 \_\_\_\_\_ ( ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 \_\_\_\_\_ ( ) visits to the site by the Architect over the duration of the Project during construction
- .3 \_\_\_\_\_ ( ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 \_\_\_\_\_ ( ) inspections for any portion of the Work to determine final completion
- .5 \_\_\_\_\_ ( ) adjustments to the Sustainability Plan
- .6 \_\_\_\_\_ ( ) meetings during the Design and Construction Phases required to define, develop and incorporate the Sustainable Measures into the Contract Documents
- .7 \_\_\_\_\_ ( ) submittals to the Certifying Authority
- .8 \_\_\_\_\_ ( ) responses to the Certifying Authority’s comments and questions
- .9 \_\_\_\_\_ ( ) appeals to the Certifying Authority pursuant to Section 3.3.7.4
- .10 \_\_\_\_\_ ( ) meetings with the Owner and Contractor, pursuant to Section 3.3.6.1, to discuss alternatives to remedy deviations from the Contract Documents or defects or deficiencies in the Contractor’s Work

**Completion of the Architect’s Services.** B101–2007 SP Section 4.3.4 establishes a time limit for performance of the Architect’s services. If the Project is not completed within the time specified, continued performance by the Architect will be compensated as Additional Services. Additionally, the Architect’s Basic Services during the Construction Phase end 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in the Initial Information, whichever is earlier, unless the Owner has authorized the Architect to continue performing Construction Phase services as Additional Services. On a sustainable project, the Owner may request that the Architect continue to perform services for the Project until the Sustainable Objective is achieved. However, achievement of the Sustainable Objective may be delayed by reasons beyond the Architect’s control and may occur later than Substantial Completion. It may, therefore, be necessary to place a limit on the duration of the Architect’s Sustainability Services under Section 3.3. Section 4.3.4 has been added allowing the parties to include an outer limit on the Architect’s services, the Owner may wish to extend the Architect’s Sustainability Services

beyond this time limit so that the Architect can perform services necessary to achieve the Sustainability Certification after the Architect’s other services under the Agreement have been completed.

**B101 SP ARTICLE 4, ADDITIONAL SERVICES**

**§ 4.3.4** Except as otherwise provided in Section 4.3.5, if the services covered by this Agreement have not been completed within \_\_\_\_\_ ( ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect’s services beyond that time shall be compensated as Additional Services.

**§ 4.3.5** If the Sustainability Services required of the Architect by Section 3.3 have not been completed within \_\_\_\_\_ ( ) months after the date of Substantial Completion, through no fault of the Architect, extension of the Architect’s services under Section 3.3 beyond that time shall be compensated as Additional Services.

**Owner’s Responsibilities**

On a sustainable project, the Owner’s responsibilities during construction could include retaining a consultant to advise the parties regarding the Sustainable Objective and Sustainable Measures; registering the Project for a Sustainability Certification; creating a budget to cover increases in cost related to achieving the Sustainable Objective; approval of the allocation of responsibility for achieving the Sustainable Measures included in the Sustainability Plan; and engaging an independent third party commissioning agent if one is required by the Sustainability Plan or Certifying Authority. The Owner’s responsibilities following construction may include responsibility for operation and maintenance in accordance with the requirements of the Certifying Authority or Sustainability Plan; responsibility for executing certain post-construction Sustainable Measures as required by the Sustainability Plan; responsibility for ensuring that tenants occupy and use the building in accordance with its design intent; and responsibility for recertification of the Project if required by the Sustainability Certification.

B101–2007 SP includes an affirmative duty of the Owner to perform those Sustainable Measures identified as a responsibility of the Owner in the Sustainability Plan.

**B101 SP ARTICLE 5, OWNER’S RESPONSIBILITIES**

**§ 5.13** Based on the Owner’s approval of the Sustainability Plan and any approved changes to the Sustainability Plan, the Owner shall perform those Sustainable Measures identified as the responsibility of the Owner in the Sustainability Plan, or as otherwise required by the Contract Documents. The Owner shall require that each of its contractors and consultants performs the contractor’s or consultant’s services in accordance with the Sustainability Plan.

Sustainable projects may require the Owner to provide additional information, such as historical utility usage data, in order for the Architect to assist the Owner in making decisions regarding the Sustainable Objective and Sustainable Measures targeted for the Project. This may be particularly true on renovation projects where information on existing construction may play a critical role in developing the Sustainability Plan. A provision should be included in the Agreement that requires the Owner to provide any information pertinent to the Project.

**B101 SP ARTICLE 5, OWNER’S RESPONSIBILITIES**

**§ 5.14** The Owner shall provide to the Architect any information requested by the Architect that is relevant and necessary for achievement of the Sustainable Objective, including design drawings; construction documents; record drawings; shop drawings and other

submittals; operation and maintenance manuals; master plans; building operation costs; building operation budgets; pertinent records relative to historical building data, building equipment and furnishings; and repair records.

Because the various Sustainability Certifications may place requirements specifically on the Owner in addition to those related to the design and construction of the Project, such as the requirement to provide utility bills, Section 5.15 requires the Owner to comply with the requirements of the Certifying Authority before and after construction.

**B101 SP ARTICLE 5, OWNER’S RESPONSIBILITIES**

**§ 5.15** The Owner shall comply with the requirements of the Certifying Authority as they relate to the ownership, operation and maintenance of the Project both during construction and after completion of the Project.

Section 5.16 obligates the Owner to pursue any appeals or other actions with the Certifying Authority necessitated by the revocation or reduction of a Sustainability Certification. For example, if the Owner occupies the Project and fails to comply with the requirements of the Certifying Authority to submit energy usage data, the Sustainability Certification could be revoked. The Owner would be the party responsible for pursuing any appeal or reinstatement action with the Certifying Authority.

**B101 SP ARTICLE 5, OWNER’S RESPONSIBILITIES**

**§ 5.16** The Owner shall be responsible for preparing, filing, and prosecuting appeals to the Certifying Authority, or taking any other actions determined by the Owner to be necessary or desirable, arising from the revocation or reduction of an awarded Sustainability Certification.

As previously discussed, commissioning is an important aspect of sustainable design and construction. B101–2007 SP assumes that the Owner will provide a commissioning agent for the Project unless the Architect otherwise agrees to perform commissioning as an Additional Service pursuant to Section 4.1.22.

**B101 SP ARTICLE 5, OWNER’S RESPONSIBILITIES**

**§ 5.17** Unless the Architect is to provide commissioning services pursuant to Section 4.1.22, the Owner shall provide the services of a commissioning agent that shall be responsible for commissioning of the Project.

## Instruments of Service

In order to be sure that the Owner is able to comply with the requirements of the Certifying Authority, Section 7.1 has been modified to state that the Owner and Architect warrant that in transmitting Instruments of Service, the transmitting party is the copyright owner of the Instruments of Service or has permission from the copyright owner to allow the Certifying Authority to publish the Instruments of Service in accordance with the policies or agreements required by the Certifying Authority. In practice, this modification is a grant of permission from the Architect to the Owner to submit Instruments of Service received from the Architect to the Certifying Authority.

**B101 SP ARTICLE 7, COPYRIGHTS AND LICENSES**

**§ 7.1** The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project and to allow the Certifying Authority to publish the Instruments of Service, or any other information, in accordance with the policies and agreements required by the

Certifying Authority. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

Section 7.2 has been modified to allow the Owner to submit the Architect's Instruments of Service to the Certifying Authority without violating the Architect's reserved rights to the Instruments of Service.

**B101 SP ARTICLE 7, COPYRIGHTS AND LICENSES**

**§ 7.2** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes, including requirements of a Certifying Authority, in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

For sustainable projects where a Sustainability Certification is sought, the Owner may be required to submit certain of the Architect's Instruments of Service to the Certifying Authority in order to comply with the documentation requirements. The Owner's license to use the Architect's Instruments of Service has been expanded to include transmission of the Architect's Instruments of Service to the Certifying Authority to comply with the requirements of the Certifying Authority. In addition, the Architect grants to the Owner a license to allow the Certifying Authority to publish the Architect's Instruments of Service as required by the Certifying Authority.

**B101 SP ARTICLE 7, COPYRIGHTS AND LICENSES**

**§ 7.3** Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, ~~provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement.~~ Solely for the purpose of obtaining or maintaining the Sustainability Certification, the Architect also grants the Owner a nonexclusive license to submit the Architect's Instruments of Service, directly or through third parties, to the Certifying Authority to comply with the requirements imposed by the Certifying Authority and further grants the Owner a nonexclusive license to allow the Certifying Authority to publish the Instruments of Service in accordance with the policies and agreements required by the Certifying Authority. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The licenses granted under this section permit the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. The licenses granted in this Section 7.3 are valid only if the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums when due. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the licenses granted in this Section 7.3 shall terminate.

## Claims and Disputes

Potential damages are an important issue on all projects but of particular importance on projects with sustainability requirements. Several contractual methods of addressing damages are discussed below. However, all damages provisions should be reviewed by each party's legal counsel.

**Consequential Damages.** The AIA has included mutual waivers of consequential damages in its agreements since 1997. The importance of this waiver as a tool to mitigate potential damages is especially applicable to a sustainable project. Consequential damages on any particular sustainable project could conceivably include, among other things, unachieved energy savings, unintended operational expenses, lost financial or tax incentives or unachieved gains in worker productivity. New language has been included in B101–2007 SP recognizing that the parties agree that these types of damages are consequential.

Because it is unlikely that any one of the project participants will be solely responsible for providing a sustainable building or Sustainability Certification, liability for consequential damages may be difficult to allocate. Additionally, the types of consequential damages that may be alleged on a sustainable project, such as unrealized gains in worker productivity, could be extremely difficult to prove.<sup>2</sup>

The mutual waiver of consequential damages included in B101–2007 SP includes expanded language to address the new types of consequential damages that may be unique to sustainable projects such as, unachieved energy savings, lost financial or tax incentives, or unachieved gains in worker productivity. However, upon consultation with legal counsel, it may be desirable to modify the mutual waiver of consequential damages to address specific or unique concerns related to your Project.

### **B101 SP ARTICLE 8, CLAIMS AND DISPUTES**

**§ 8.1.3.1** The mutual waiver in this Section 8.1.3 expressly includes those consequential damages resulting from failure of the Project to achieve the Sustainable Objective, or failure to achieve one or more Sustainable Measures, including unachieved energy savings, unintended operational expenses, lost financial or tax incentives, or unachieved gains in worker productivity.

**Limitation of Liability.** Due to the nature of the risks to the Architect on a sustainable project, the Architect might consider including a limitation of liability provision to establish a maximum amount of liability for the Architect if there is a claim by the Owner. Note that the Limitation of Liability clause applies only to claims between the Owner and Architect, and that claims from third parties will not normally be affected.

For model language that provides several methods of formulating a limitation of liability provision that may be used in B101–2007 SP, see AIA Document [B503™–2007](#), Guide for Amendments to AIA Owner/Architect Agreements.

**Indemnity.** B101–2007 SP does not contain a provision requiring that the Architect indemnify the Owner. AIA Document [B503–2007](#), Guide for Amendments to AIA Owner-Architect Agreements, contains a discussion of indemnity provisions under Section 18. Generally, the Architect's duty to indemnify should be carefully drafted so that the Architect is only liable for those third party claims to the extent caused by the Architect's negligent acts or omissions with recovery limited to the available proceeds of insurance coverage. Indemnity

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<sup>2</sup> Users are cautioned against executing any AIA Contract Document that has been modified to eliminate the mutual waiver of consequential damages language.



language that would require the Architect to indemnify the Owner for liability not caused by the Architect's negligence or that is otherwise outside the policy limits of insurance coverage on the Project poses additional risk for an architect and in some states may be unenforceable. Many states have laws limiting or prohibiting the enforceability of indemnity clauses. The parties are cautioned to consult with legal counsel as to the specific application of local laws.

**Confidentiality of Sustainability Documentation.** As noted above, many Certifying Authorities require that the party registering or submitting a Project for a Sustainability Certification enter into certain ancillary agreements with the Certifying Authority. GBCI requires that the registrant of the Project enter into the Registration Agreement with GBCI. The Registration Agreement provides for a license to GBCI to access and view all information submitted to GBCI by or on behalf of the registrant, in relation to the Project. The Registration Agreement provides that this license also includes the right for GBCI and USGBC to use, reproduce, publish and display this information in the ways identified in the LEED Policy Manual. Submission of certain Project information and Instruments of Service to GBCI may be in violation of strict confidentiality provisions contained in certain Owner/Architect Agreements. AIA Document B101–2007 SP includes language authorizing the Owner or Architect to disclose information to the Certifying Authority.

**B101–2007 SP, ARTICLE 10, MISCELLANEOUS PROVISIONS**

**§ 10.8** . . . or (4) the Certifying Authority or such other persons or entities that need to receive such information in order for the Owner or Architect to fulfill their obligations under this Agreement.

**Guarantee of Performance.** As stated previously, successful achievement of the Sustainable Objective will depend not only on the design of the Project but also the Owner's use and operation of the Project; the Work provided by the Contractor or the work or services provided by the Owner's other contractors or consultants; or interpretation of credit requirements by a Certifying Authority. Accordingly, the Architect is not in a position to guarantee or warrant that the Project will achieve the Sustainable Objective. Section 10.9 below has been included to address this risk.

**B101 SP ARTICLE 10, MISCELLANEOUS PROVISIONS**

**§ 10.9** The Owner and Architect acknowledge that achieving the Sustainable Objective is dependent on many factors beyond the Architect's control, such as the Owner's use and operation of the Project; the Work provided by the Contractor or the work or services provided by the Owner's other contractors or consultants; or interpretation of credit requirements by a Certifying Authority. Accordingly, the Architect does not warrant or guarantee that the Project will achieve the Sustainable Objective.

## Compensation

**Additional Services.** The standard B101–2007 separates the Architect's compensation for services into two categories, compensation for Basic Services and compensation for Additional Services. In addition, compensation for Additional Services is subdivided into two categories; those Additional Services known at the time of entering into the Agreement and those that arise during the course of the Project. This allows for flexibility in developing the Architect's compensation structure for the Project. For example, Basic Services could be compensated based on a percentage of the Cost of the Work while Additional Services might be billed on an hourly basis. [B503–2007](#) may be referenced for a more detailed discussion on compensation.

In jurisdictions where building codes have incorporated sustainable design and construction requirements, Owners may expect sustainable design services as part of the Architect's Basic Services without additional compensation. However, sustainable projects can, and often do, require more time, consideration and effort on the part of the Architect. The Architect will need to consider whether the Architect's typical compensation structure for Basic Services requires adjustment in consideration of the significant additional responsibilities, risks and expenditures of time the Architect may be required to assume. This may be problematic for Architects that bill Basic Services as a percentage of the Cost of the Work; and may be particularly troublesome on public projects where compensation for the Architect's Basic Services may be set by laws, ordinances and regulations. The Architect will need to have a discussion with the Owner regarding the additional time and effort involved in delivering a sustainable project and the necessity for additional compensation.

B101–2007 SP includes a new Section 11.2 that allows the parties to negotiate a separate compensation structure for the Architect's Sustainability Services described under Section 3.3. Section 11.1 is now reserved for the Architect's traditional Basic Services under Sections 3.1 and 3.2 and Section 11.3 and 11.4 are now used to indicate the Architect's compensation for Additional Services. Section 11.2 has been included to recognize that while the Sustainability Services are included as part of the Architect's Basic Services, due to the complexity of the Sustainability Services on some Projects, it may be necessary to negotiate separate compensation for these services.

**B101 SP ARTICLE 11, COMPENSATION**

**§ 11.2** For the Architect's Sustainability Services described under Section 3.3, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

**Compensation for Architect's Consultants.** The Architect's Sustainability Services may include elements outside the services typically performed in the Architect's day-to-day practice and may require the involvement of consultants. These services could include some of the services outlined above, such as commissioning, or may include, for example, energy modeling or lighting. The services of consultants may be costly and may fall outside of what Architects traditionally include in their compensation for Basic Services. The Architect may consider a form of direct reimbursement for the costs of these consultants.

**Phased Payments.** Section 11.6 allows the Owner and Architect to allocate payment for each phase of the Architect's Basic Services when the services are performed on a percentage of the Cost of the Work basis or where compensation is based on a Stipulated Sum. Section 11.6.1 apportions the Architect's compensation, when based on a percentage of the Cost of the Work or Stipulated Sum, on the same percentages designated for each phase in Section 11.6, unless otherwise stipulated by the parties.

**B101 SP ARTICLE 11, COMPENSATION**

**§ 11.6.1** Where compensation for the Sustainability Services described in Section 3.3 is also based on a stipulated sum or percentage of the Cost of the Work, the Sustainability Services shall be compensated in accordance with the schedule set forth in Section 11.6 unless otherwise provided below:  
*(If different than Section 11.6, insert the compensation schedule for Sustainability Services based on a stipulated sum or percentage of the Cost of the Work.)*

**Reimbursable Expenses.** Sustainable projects may involve new reimbursable expenses that are not common on traditional projects. New reimbursable expenses could include, for example, the cost of registering or applying for certification of the Project with a selected Certifying Authority, or Project specific software necessary to achieve the Sustainable Objective. B101–2007 SP specifies a number of new reimbursable expenses unique to sustainable projects. The specific requirements of your Project may necessitate the expansion of this list.

**B101 SP ARTICLE 11, COMPENSATION**

**§ 11.9.1** Reimbursable Expenses are in addition to compensation for Basic, Sustainability and Additional Services and include expenses incurred by the Architect and the Architect’s consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence; . . .
- .11 Additional expenses for Project specific software or other equipment or materials necessary to achieve, or directly related to, the Sustainable Objective, with prior written approval from the Owner;
- .12 Registration fees and any other fees charged by the Certifying Authority;
- .13 Presentation materials required for submission to the Certifying Authority or as otherwise necessary to achieve the Sustainable Objective, with prior written approval from the Owner; and
- .14 Other similar Project-related expenditures.

Because of the potentially significant costs involved in registering a Project with a Certifying Authority, Section 11.11.1 has been added to allow for an initial payment from the Owner to the Architect for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The initial payment should be based on an estimate of the potential cost of registration and will be credited to the Owner’s account at the time the expense is incurred.

**B101 SP ARTICLE 11, COMPENSATION**

**§ 11.11.1.1** If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of \_\_\_\_\_ (\$\_\_\_) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect’s payments to the Certifying Authority shall be credited to the Owner’s account at the time the expense is incurred.

**B101–2007 SP, Exhibit A**

B101–2007 SP, Exhibit A was modified in a few key areas as outlined below.

While the Sustainability Workshop and the process for development of the Sustainability Plan will assist the Owner and Architect in developing the Sustainable Objective for the Project, the Owner will typically have some idea of the Sustainable Objective it intends to accomplish at the outset of the Project. The Initial Information has been expanded so that the parties may include the Owner’s anticipated Sustainable Objective for the Project. At this early stage, the Owner may only have a vague notion of the Sustainable Objective it wishes to achieve; however, it is beneficial to establish a meaningful description of the anticipated Sustainable Objective at this time to facilitate the design process. Ultimately, major deviations from the intent of this anticipated Sustainable Objective could result in Additional Services for the Architect.

**B101 SP EXHIBIT A, ARTICLE 1, PROJECT INFORMATION**

**§ A.1.6** The Owner’s anticipated Sustainable Objective for the Project:  
*(Identify the Owner’s Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency.)*

The Architect should understand from the very beginning of the Project what incentive programs the Owner intends to pursue if those incentives are based on achievement of a certain Sustainable Objective. This will allow the Architect to take steps to meet the requirements of the authority granting the incentive. However, it should be noted that this section is provided only for the Architect’s information and is not intended to establish a claim for consequential damages that are otherwise waived under the Agreement.

**B101 SP EXHIBIT A, ARTICLE 1, PROJECT INFORMATION**

**§ A.1.7** Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives, including those that are dependent on the Architect’s services, are as follows:  
*(Identify incentive programs the Owner intends to pursue and deadlines for submitting or applying for the incentive program.)*

Unless the Owner and Architect agree otherwise, the Owner is responsible for hiring a commissioning agent for the Project. The Architect may establish an early line of communication with the Owner’s commissioning agent. This section has been expanded with a parenthetical prompt to list the contact information for the Owner’s commissioning agent.

**B101 SP EXHIBIT A, ARTICLE 1, PROJECT TEAM**

**§ A.2.3** The Owner will retain the following consultants and contractors:  
*(If the Owner intends to retain consultants, including a commissioning agent, and contractors, list discipline and, if known, identify them by name and address.)*

Because B101–2007 SP provides for the Owner and Architect to agree to a separate compensation structure for the Architect’s Sustainability Services, Exhibit A includes a new section to list those consultants of the Architect that will be billed as part of the Architect’s Sustainability Services.

**B101 SP EXHIBIT A, ARTICLE 1, PROJECT TEAM**

**§ A.2.5.2** Consultants retained pursuant to Sustainability Services:  
*(If known, list Consultants who will provide services pursuant to Section 3.3 of AIA Document B101™–2007 SP, including any Consultants already listed in Section A.2.5.1.)*

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## Chapter 4

### C401–2007 SP, Agreement Between Architect and Consultant

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For a sustainable project, it may be necessary for the Architect to hire consultants with expertise in specific areas of the project related to sustainable design. Like all projects, sustainable projects require the careful development and coordination of the scope of services to be provided by each of the respective consultants.

AIA Document C401™–2007 SP, Standard Form of Agreement Between Architect and Consultant, for use on a Sustainable Project, is a standard form of agreement to be used by the Architect and the Consultant providing services to the Architect on a sustainable project. C401–2007 SP establishes the Architect’s and Consultant’s responsibilities to each other and their mutual rights under the Agreement. C401–2007 SP incorporates by reference a pre-existing Owner/Architect Agreement known as the Prime Agreement and is coordinated for use with B101–2007 SP. C401–2007 SP utilizes a flow-down provision, at Section 1.3, to incorporate the rights and responsibilities that the Owner and Architect have with respect to each other in the Prime Agreement and extend those rights and responsibilities, respectively, to the Architect and the Consultant.

Section 1.2 of C401–2007 SP requires the Architect and the Consultant to describe the Portion of the Project for which the Consultant is required to provide services. Once the Consultant’s Portion of the Project has been defined, the flow-down provision requires the Consultant to assume toward the Architect all obligations and responsibilities that the Architect assumes toward the Owner in the Prime Agreement as applicable to the Consultant’s Portion of the Project. Therefore, any Sustainable Measures required of the Architect in the Sustainability Plan that are contained in the Consultant’s Portion of the Project would become the responsibility of the Consultant.

Given this flow down of responsibilities, the Architect should clearly define the Consultant’s scope of services for the Consultant’s Portion of the Project. Additionally, the Architect should specify any limitations or other conditions on the Consultant’s services. With this understanding of the Architect’s expectations of the Consultant, there were very few provisions of the Consultant agreement that required modification in developing the SP version. Each of the changes is discussed below.

The parenthetical explanation included in Section 1.2 has been modified to alert users to include information regarding the Consultant’s responsibility for completing portions of the Sustainability Services under the Prime Agreement. This language was added to alert the Architect and the Consultant that the Consultant may be responsible for portions of the Architect’s Sustainability Services.

#### **C401 SP ARTICLE 1, GENERAL PROVISIONS**

**§ 1.2** The portion of the Project for which the Consultant shall provide services is hereinafter called This Portion of the Project. Except as set forth herein, the Consultant shall not have any duties or responsibilities for any other portion of the Project. This Portion of the Project consists of the following:  
*(Fully describe the Portion of the Project for which the Consultant shall provide the services set forth in Article 3, including the Consultant’s responsibility for Sustainability Services under the Prime Agreement.)*

Section 1.3 has been modified to require the Consultant to perform the Architect’s Sustainable Measures to the extent applicable to This Portion of the Project.

**C401 SP ARTICLE 1, GENERAL PROVISIONS**

**§ 1.3** To the extent that the provisions of the Prime Agreement apply to This Portion of the Project, the Architect shall assume toward the Consultant all obligations and responsibilities that the Owner assumes toward the Architect, and the Consultant shall assume toward the Architect all obligations and responsibilities that the Architect assumes toward the Owner, including responsibility for performing the Architect’s Sustainable Measures to the extent applicable to This Portion of the Project. Insofar as applicable to this Agreement, the Architect shall have the benefit of all rights, remedies and redress against the Consultant that the Owner, under the Prime Agreement, has against the Architect, and the Consultant shall have the benefit of all rights, remedies and redress against the Architect that the Architect, under the Prime Agreement, has against the Owner. Where a provision of the Prime Agreement is inconsistent with a provision of this Agreement, this Agreement shall govern.

Under B101–2007 SP, the Architect is responsible for conducting a Sustainability Workshop with the Project participants. Because the Consultant’s Portion of the Project may include performance of certain Sustainable Measures or portions of the Sustainability Services, the Consultant is required to attend the Sustainability Workshop to the extent required by the Prime Agreement.

**C401 SP ARTICLE 3, SCOPE OF CONSULTANT’S SERVICES**

**§ 3.1.6** Upon request of the Architect, the Consultant shall attend the Sustainability Workshop pursuant to the Prime Agreement.

The Sustainability Plan developed by the Architect, pursuant to the Owner-Architect Agreement, will set forth specific responsibilities of the Owner, Architect and Contractor. Because the Consultant’s services for This Portion of the Project flow down from the Architect’s services under the Owner-Architect Agreement, the Architect is required to provide the Consultant with a copy of the Sustainability Plan.

**C401 SP ARTICLE 5, ARCHITECT’S RESPONSIBILITIES**

**§ 5.1** The Architect shall provide available information in a timely manner regarding requirements for and limitations on This Portion of the Project, including a copy of the Owner’s program for the Project and a copy of the Sustainability Plan when approved by the Owner. Within seven days after receipt of a written request, the Architect shall request information from the Owner as necessary and relevant for the Consultant to evaluate, give notice of or enforce lien rights. Within seven days of receipt of such information from the Owner, the Architect shall furnish the information to the Consultant.

Various Sustainability Certifications, like Green Globes, may require the submission of certain documents, reports or other information to the Certifying Authority. Section 10.6 allows the Architect or the Consultant to disclose information, otherwise designated as confidential, to the Certifying Authority as necessary to achieve the Sustainable Objective.

**C401 SP ARTICLE 10, MISCELLANEOUS PROVISIONS**

**§ 10.6** If the Consultant or Architect 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) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, (3) the Certifying Authority, if applicable, only as necessary to achieve the Sustainable Objective, or (4) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

Section 10.7 states that nothing contained in the Agreement shall be construed as a guarantee or warranty that the Sustainable Objective will be achieved. This language is similar to language included in B101–2007 SP and is included here because the success of a sustainable project is dependent on the services and work of all Project participants and cannot be guaranteed by any one party. This language is not intended to absolve the Consultant of liability for its negligent acts or omissions.

**C401 SP ARTICLE 10, MISCELLANEOUS PROVISIONS**

**§ 10.7** The Architect and Consultant acknowledge that achieving the Sustainable Objective is dependent on many factors beyond the Consultant’s control, such as the Owner’s use and operation of the Project; the Work provided by the Contractor or its subcontractors; the services provided by the Architect or its other consultants; the work or services provided by the Owner’s other contractors or consultants; or interpretation of credit requirements by a Certifying Authority. Accordingly, the Consultant does not warrant or guarantee that the Project will achieve the Sustainable Objective.

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## Chapter 5

### **B214–2012, Architect’s Services: LEED® Certification**

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The USGBC’s LEED certification rating systems are widely used in the design and construction of sustainable projects, and have been incorporated into the building codes or statutes of some jurisdictions. AIA Document B214™–2012, Standard Form of Architect’s Services: LEED® Certification, establishes the Architect’s scope of services for LEED Certification. Among other things, the Architect’s services include conducting a LEED Workshop where the LEED Certification system will be reviewed and LEED credits will be targeted, preparing a LEED certification plan, monitoring the LEED certification process and providing LEED specifications for inclusion in the Contract Documents.

#### **When to Use AIA Document B214**

B214–2012 may be used in two ways, either as a scope of services for a LEED Consulting Architect or as a scope of Additional Services for a Prime Architect. A check box selection is provided for the parties to designate “Prime Architect” or “LEED Consulting Architect,” as appropriate. Based on that selection, the applicable provisions of B214–2012, describing the Architect’s LEED Certification Services, will vary. The Prime Architect is responsible for all of the services under B214–2012, except those under Section 2.8. The LEED Consulting Architect is responsible for all of the services under B214–2012, except those under Section 2.7.

If providing LEED certification services as the Prime Architect for the Project, the Architect takes on direct responsibility for the LEED Certification Services and has responsibility for preparing Contract Documents, including the Drawings and Specifications that incorporate the requirements of the LEED Certification Plan. If providing LEED certification services as the LEED Consulting Architect, the Architect is not responsible for incorporating the requirements of the LEED Certification Plan into the Drawings and Specifications. The LEED Consulting Architect provides the LEED Certification Plan to the Owner’s prime Architect for incorporation into the Drawings and Specifications and provides advice to the Owner regarding the Contract Documents and any impediments to achievement of the anticipated LEED Certification.

B214 is not a stand-alone document and to become effective it must be incorporated into an owner-architect agreement. It may be used with AIA Document B102™–2007, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect’s Services, to provide the Architect’s sole scope of services, or with B102–2007 in conjunction with other standard form services documents. It may also be incorporated into any owner-architect agreement when the agreement is executed or used with AIA Document G802™–2007, Amendment to the Professional Services Agreement, to create a modification to any owner-architect agreement. B214–2012 should not, however, be used with the AIA’s Sustainable Projects Owner-Architect agreements, such as B101™–2007 SP. Those agreements already have provisions that will encompass services for LEED Certification as part of the Architect’s Sustainability Services when the Owner’s Sustainable Objective includes LEED certification.

#### **LEED Online v3**

In 2009, the USGBC released LEED version 3.0. As part of that release, the USGBC mandated the use of LEED Online™ Version 3 (“LEED Online”) as the vehicle for project registration, document submission, and project certification. The current LEED registration process requires that all parties who will submit documentation,



in furtherance of project registration or certification, agree to Terms and Conditions for the Use of LEED Online. In addition, the person or entity seeking to register a project for LEED Certification and/or ultimately applying for that certification must also agree to the LEED Project Registration Agreement, the LEED Project Certification Agreement, and the LEED Certification Policy Manual. Those agreements also incorporated, by reference, requirements and terms found in other LEED-related documents.

As originally drafted, these agreements placed significant obligations and responsibilities on the project registrant and on the persons or entities submitting the project for certification.<sup>3</sup> Concerns over the structure and terms of these agreements were raised with the USGBC and GBCI by several industry groups. The USGBC and GBCI considered the concerns raised and, in 2011, issued revised agreements and related documents for use in conjunction with LEED Online and the LEED certification process. The revised documents addressed many of the concerns raised.

The 2011 revised documents, and the Confirmation of Agent’s Authority (version dated December 19, 2011, was current as of this writing) in particular, clarify that the USGBC and GBCI are primarily interested in holding the project owner accountable for compliance with the requirements for seeking and maintaining LEED certification. Having said that, non-owner participants may still assume potential liability arising from the use of LEED Online and participation in the registration and certification process. It is therefore important that all project participants thoroughly read and understand the agreements and related documents associated with the use of LEED Online. Owners should be aware of the content of these documents and the practical and legal obligations they impose. For a more detailed discussion of these agreements see [\*Special Terms and Conditions Imposed by Third Party Certification or Rating Entities \(“Certification Authorities”\)\*](#), and in particular GBCI and USGBC, in Appendix G of this Guide.

#### **LEED v4**

As of the date of this Guide, the USGBC is working toward the release of LEED v4. The USGBC has stated that LEED v4 will address new market sectors and provide for increased technical rigor and streamlined services. The ballot period for approval of LEED v4 is set to conclude on June 30, 2013.

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<sup>3</sup> In some instances, those obligations went well beyond what that person or entity could reasonably control. For example, the Project Certification Agreement required the registrant, regardless of whether the registrant was the owner or some other project participant, to provide site access to documentation, and access to project specific energy and water performance documentation for a significant period of time after project completion. Clearly these matters would be within the purview of the project owner and would normally be beyond the scope of matters a project architect, contractor, or green building consultant could control.

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## Chapter 6

# A101–2007 SP, Agreement Between Owner and Contractor, and A201–2007 SP, General Conditions of the Contract for Construction

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The following sections are coordinated with the article and section numbers found in AIA Documents A101™–2007 SP and A201™–2007 SP, as indicated, for easy reference. However, the information included below, with careful review and coordination, may be applicable to other AIA agreements. Users are encouraged to consult an attorney before modifying a document.

### General Provisions

**The Contract Documents.** Because the Sustainability Plan prepared by the Architect and approved by the Owner is the critical document in outlining the Owner’s, Architect’s and Contractor’s responsibilities for Sustainable Measures necessary to achieve the Sustainable Objective, it is important to include reference to the Sustainability Plan as a Contract Document.

The term Contract Documents is defined in both AIA Document A101–2007 SP and AIA Document A201–2007 SP. The definition in each of these documents has been modified to include the Sustainability Plan.

#### **A101 SP ARTICLE 1, THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, [the Sustainability Plan](#), Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

#### **A201 SP ARTICLE 1, GENERAL PROVISIONS**

##### **§ 1.1 Basic Definitions**

##### **§ 1.1.1 The Contract Documents**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, [the Sustainability Plan](#), Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor’s bid or proposal, or portions of Addenda relating to bidding requirements.

Reference to the Sustainability Plan has also been added to the enumeration of Contract Documents included in A101–2007, Article 9.

**A101 SP ARTICLE 9, ENUMERATION OF CONTRACT DOCUMENTS**

**§ 9.1.7** The Sustainability Plan:

*(Identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information.)*

Title	Date	Pages
Other identifying information:		

**Special Definitions.** The Special Definitions described in [Chapter 1](#) of this Guide have been included as Section 1.1.9 of A201–2007 SP.

### Owner’s Responsibilities

Achieving the Sustainable Objective relies on more than the Contractor’s performance. The Owner, Architect and Contractor must each perform those services identified as their responsibility in the Sustainability Plan. An affirmative obligation for the Owner to perform those Sustainable Measures identified as the responsibility of the Owner has been included as part of the General Conditions.

**A201 SP ARTICLE 2, OWNER**

**§ 2.2.6** The Owner shall perform those Sustainable Measures specifically identified as the responsibility of the Owner in the Sustainability Plan, including any approved changes, or as otherwise required by the Contract Documents. The Owner shall require that each of its contractors and consultants perform the contractor’s or consultant’s services in accordance with the Sustainability Plan.

Because the various Sustainability Certification programs may place requirements specifically on the Owner in addition to those related to the design and construction of the Project, such as the requirement to provide post occupancy utility bills, language has been added stating that the Owner will comply with the requirements of the Certifying Authority before and after construction.

**A201 SP ARTICLE 2, OWNER**

**§ 2.2.7** The Owner shall comply with the requirements of the Certifying Authority as they relate to the ownership, operation and maintenance of the Project both during construction and after completion of the Project.

### Contractor’s Responsibilities

As with the Owner, an affirmative requirement that the Contractor perform those Sustainable Measures identified as the responsibility of the Contractor in the Sustainability Plan and Contract Documents has been included as part of the General Conditions.

**A201 SP ARTICLE 3, CONTRACTOR**

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents, including any Sustainable Measures Identified as the responsibility of the Contractor in the Sustainability Plan.

Section 3.2.2.1 has been added to provide a process for correcting conditions that might affect achievement of the Sustainable Objective. If the Owner or Architect recognizes such a condition, the Contractor is required to participate in meetings with the Owner and Architect to discuss alternatives to correct the condition. The Contractor is also responsible for reporting such conditions that are discovered or made known to the Contractor.

**A201 SP ARTICLE 3, CONTRACTOR**

**§ 3.2.2.1** The Contractor shall meet with the Owner and Architect to discuss alternatives in the event the Owner or Architect recognizes a condition that will affect achievement of a Sustainable Measure or achievement of the Sustainable Objective. If any condition is discovered by, or made known to, the Contractor that will adversely affect the Contractor's achievement of a Sustainable Measure for which the Contractor is responsible pursuant to the Sustainability Plan, the Contractor will promptly provide notice to the Architect and meet with the Owner and Architect to discuss alternatives to remedy the condition.

Reference to the Certifying Authority has been added to this section. The Contractor is not required to ascertain if the Contract Documents are in accordance with the requirements of the Certifying Authority but must report nonconformities discovered by or made known to the Contractor.

**A201 SP ARTICLE 3, CONTRACTOR**

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, or requirements of the Certifying Authority, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**Substitutions.** The process for handling substitutions on a sustainable project is complicated by the fact that the suitability, characteristics, performance and reliability of materials and equipment can have far-reaching impacts, not only on the Project schedule and the long-term function of the Project, but also on whether targeted Sustainable Measures will be achieved. The process for evaluating substitutions must be communicated to all parties to the Project. The following section establishes the criteria for submission of substitution requests that may have an effect on the Sustainable Objective. Such language may also be included in the General Requirements (Division 1 of the Specifications) as well as the Supplementary Conditions. A more detailed process for the review of substitutions can be found in AIA Document [A503™–2007](#).

**A201 SP ARTICLE 3, CONTRACTOR**

**§ 3.4.2.1** The Contractor shall include, with any request for substitution, a written representation identifying any potential effect the substitution may have on the Project's achievement of a Sustainable Measure or the Sustainable Objective. The Owner and Architect shall be entitled to rely on any such representation. In preparing this representation, the Contractor may request additional information from the Architect describing how the product, material or equipment, for which a substitution is proposed, was intended to satisfy the requirements of a Sustainable Measure or contribute toward achievement of the Sustainable Objective. The Architect shall respond to the Contractor's request in accordance with Section 4.2.14.

**Warranty.** Achieving the Sustainable Objective depends upon a number of decisions and actions during design and construction of the Project. The Owner's actions post-construction and during occupancy of the building also affect achievement and maintenance of the Sustainable Objective. Contractors should avoid incorporating contractual language or taking actions that could be construed as establishing a warranty as it pertains to achievement of the Sustainable Objective. Language stating that the Contractor will construct the Project in accordance with the Contract Documents (including the Sustainability Plan) but that the Contractor cannot warrant that the Project will achieve the Sustainable Objective is included in Section 3.5.2.

**A201 SP ARTICLE 3, CONTRACTOR**

**§ 3.5.2** The Contractor shall perform the Sustainable Measures required to be performed by the Contractor in accordance with the Contract Documents; however, nothing contained in this Section 3.5 shall be construed as a guarantee or warranty by the Contractor that the Project will achieve the Sustainable Objective.

**Compliance with Laws.** Many state and local jurisdictions have adopted policies and laws establishing requirements for sustainable design and construction. Some jurisdictions require all projects to achieve a specified Sustainability Certification while other jurisdictions have enacted comprehensive laws that outline specific performance requirements. The Contractor should understand what is required in the jurisdiction where the Project is located.

AIA Document A201–2007 SP, Section 3.7, requires the Contractor to (1) comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work and (2) assume appropriate responsibility for such Work and bear the costs attributable to correction of Work the Contractor performs knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. While no modifications have been made to this language in the Sustainable Projects documents, the Contractor should become familiar with applicable jurisdictional requirements related to sustainable design and construction.

**Sustainability Documentation.** Where an Owner requires achievement of a Sustainability Certification or where a Sustainability Certification is required by law, the Contractor may be responsible for preparing certain Sustainability Documentation related to the Contractor’s Work as set forth in the Sustainability Plan.

**A201 SP ARTICLE 3, CONTRACTOR**

**§ 3.11.2** The Contractor shall be responsible for timely preparing and completing the Sustainability Documentation required from the Contractor by the Contract Documents, including any Sustainability Documentation required to be submitted after Substantial Completion. The Contractor shall submit the Sustainability Documentation to the Architect in accordance with any schedules or deadlines set forth in, or as otherwise required by, the Contract Documents. In the absence of schedules or deadlines for submission of Sustainability Documentation in the Contract Documents, the Contractor will submit the Sustainability Documentation with reasonable promptness so that the Architect may submit the Sustainability Documentation to the Certifying Authority.

**Submittals.** The Contractor’s submittals, such as shop drawings, product data and samples, play an increasingly important role on sustainable projects. Submittals related to sustainable products, materials and methods often require additional time for preparation. While the sections on submittals have not been revised in the Sustainable Projects documents, the Contractor may consider including additional time in its submittal schedule to allow for preparation of submittals relating to sustainable products, materials and methods. Multiple submittals related to a particular Sustainable Measure must be considered together as they often have a collective effect on achieving a Sustainable Measure. As with all submittals, the Contractor has an obligation, under Section 3.12.6 of AIA Document A201–2007 SP, to review, coordinate and approve all submittals prior to submission to the Architect. In addition, the Contractor may not perform Work for which a submittal was required until the submittal is approved by the Architect pursuant to Section 3.12.7 of A201–2007 SP. On Projects where performance specifications are provided for sustainable products there may be additional criteria that must be verified by the Contractor.

The Owner's Sustainable Objective or other Project requirements may necessitate that the Contractor's design professionals recommend the use of untested materials or equipment on the Project. The Contractor's design professionals may be unable to confirm a track record of reliability for the materials or equipment. If the materials or equipment fail to perform in accordance with the manufacturer's representations, the Project may fail to achieve the Sustainable Objective. The Contractor will discuss untested products proposed by its design professionals with the Owner and Architect, and inform the Owner and Architect of any potential impact on the Sustainable Objective that may occur if the product fails to meet the manufacturer's representations. If the Owner then chooses to use the product, Section 3.12.10.1 may limit the liability of the Contractor, the Contractor's design professional, and the Architect for a failure of the product to perform in accordance with the manufacturer's representations.

**A201 SP ARTICLE 3, CONTRACTOR**

**§ 3.12.10.1** In the event the Contractor's design professional proposes the use of materials or equipment that have had limited testing or verification of performance, the Contractor shall discuss with the Architect and Owner the proposed use of such materials or equipment and potential effects on the Sustainable Objective that may occur if the materials or equipment fail to perform in accordance with the manufacturer's or supplier's representations. The Owner will render a written decision regarding the use of such materials or equipment in a timely manner. In the event the Owner elects to proceed with the use of such materials or equipment, the Contractor and Architect shall be permitted to rely on the manufacturer's or supplier's representations and shall not be responsible for any damages arising from the failure of the material or equipment to perform in accordance with the manufacturer's or supplier's representations.

**Cleaning Up.** Construction waste management and disposal plays an important part on sustainable projects. Building demolition, selective demolition, renovation, and new construction all contribute to generating waste which is often diverted to landfills. Many materials generated from the construction process are able to be salvaged for re-use in the Project or for recycling. For example site demolition could offer opportunities for recycling of asphalt paving for use in new paving, and for recycling masonry, and concrete obtained from demolition for use in clean site fill. Waste generated by construction workers (e.g. paper and beverage containers) and by the construction process can be recycled.

**A201 SP ARTICLE 3, CONTRACTOR**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. The Contractor shall also recycle, reuse, remove or dispose of materials as required by the Contract Documents.

Under A201–2007 SP, the Contractor is required to prepare and submit a construction waste management and disposal plan in accordance with the Contract Documents. The goal of a construction waste management and disposal plan is to reduce the amount of materials entering a landfill. There are several components to the plan. First, a quantitative goal must be set by the Owner for recycling or salvaging a certain percentage by weight of nonhazardous demolition and construction waste on the Project. This percentage can also be set by public authorities having jurisdiction over the Project or by a Certifying

Authority. Other portions of the plan include identification of waste for recycling, a waste reduction work plan, a cost analysis and an implementation plan (including training, monitoring and reporting).

The process can be complex and time-consuming. It can also be costly, as reports must be generated, personnel must be trained and often a waste management coordinator is employed. The construction waste management and disposal program may also need to be detailed under a separate Division 01 specification section for the Project outlining all the applicable requirements and procedures.

**A201 SP ARTICLE 3, CONTRACTOR**

**§ 3.15.2** The Contractor, in accordance with the Contract Documents, shall prepare and submit to the Architect and Owner a construction waste management and disposal plan outlining the procedures and processes for salvaging, recycling or disposing of construction waste generated from the Project.

**§ 3.15.3** If the Contractor fails to clean up in accordance with Section 3.15.1 and as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

**Site Visits.** Section 4.2.3 has been added to require that the Architect report to the Owner known deviations from the Contract Documents and defects or deficiencies in the Work that the Architect observes during site visits and that will have an impact on achievement of the Sustainable Measures.

**A201 SP ARTICLE 4, ARCHITECT**

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work, including those that will impact the Contractor's achievement of its Sustainable Measures. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

Section 4.2.8 has been added requiring the Architect to notify the Owner in the event that a proposed change by the Contractor will materially impact a Sustainable Measure or the Sustainable Objective. The Owner may then authorize further investigation of the change.

**A201 SP ARTICLE 4, ARCHITECT**

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. If the Architect determines that implementation of a proposed change would materially impact a Sustainable Measure or the Sustainable Objective, the Architect shall notify the Owner, who may authorize further investigation of such change. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

Section 4.2.9 has been modified to require submission of the Sustainability Documentation prior to issuance of a final Certificate for Payment.

**A201 SP ARTICLE 4, ARCHITECT**

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner’s review and records, written warranties, Sustainability Documentation and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

**Subcontractors.** The Sustainability Plan has been added to the copies of the Contract Documents that the Contractor is required to provide to the Subcontractors.

**A201 SP ARTICLE 4, SUBCONTRACTORS**

**§ 5.3 Subcontractual Relations**

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor’s Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, including the Sustainability Plan and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**Delays and Substantial Completion**

**Delays.** Projects that seek to incorporate Sustainable Measures or achieve a Sustainability Certification pose new challenges for a Contractor who desires to achieve Substantial Completion of the Project within the Contract Time. The use of new and potentially untested products, or products that must be obtained from a particular manufacturer or in a particular location, creates a potential source of delays.

Because specific materials or equipment may be necessary to achieve a Sustainable Measure or, ultimately, to achieve the Sustainable Objective, the Contractor should verify that the specified materials or equipment can be fabricated and delivered to the Project in accordance with the construction schedule. Any delays in delivery, or unavailability of specified materials or equipment, known to the Contractor should be brought to the attention of the Architect as soon as possible so that alternative materials, equipment or sources may be considered.

**Substantial Completion.** Under AIA Contract Documents, Substantial Completion occurs when the Project can be occupied and used for its intended purpose. Because the Contractor cannot control the review and approval process of a Certifying Authority or may not be responsible for collecting all of the data necessary to quantify



achievement of a Sustainable Objective, the Contractor is cautioned against entering into a contract that would require achievement of the Sustainable Objective as a condition precedent to Substantial Completion. However, it is often the case that the Contractor has some responsibility for documentation required to be submitted to the Certifying Authority. Because of this, Section 9.8.1 of A201–2007 SP requires that the Contractor submit all Sustainability Documentation that the Contractor is required to provide as a condition precedent to achieving Substantial Completion. However, where the Sustainability Documentation may not, by its nature, be provided prior to Substantial Completion, the Contractor may provide the documentation when it is available.

#### **A201 SP ARTICLE 9, PAYMENTS AND COMPLETION**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Except for that portion of the Sustainability Documentation which by its nature must be provided after Substantial Completion, the Contractor shall submit all other Sustainability Documentation required from the Contractor by the Contract Documents no later than the date of Substantial Completion. Verification that the Project has achieved the Sustainable Objective, or the actual achievement of the Sustainable Objective, or the actual achievement of the Sustainable Objective, shall not be a condition precedent to issuance of a Certificate of Substantial Completion in accordance with Section 9.8.4.

At the time of Substantial Completion, the Contractor may still be responsible under the Contract Documents for certain Sustainable Measures necessary to achieve the Sustainable Objective. A performance bond, such as AIA Document A312™–2010, may help protect the Owner’s interests in seeing that the Contractor’s obligations are met. Assuming the Owner is not in default of its obligations under the contract as defined by the bond form, in the event of a Contractor default, the Performance Bond surety assumes responsibility for either obtaining performance of the Contractor’s Work under the Contract or, alternatively, paying the Owner a sum of money up to the limit of the penal sum of the bond to allow the Owner to procure performance by others.

If the Owner requires a Performance Bond, the bond amount should be inserted in AIA Document A101–2007 SP in the fill point in Article 10. Additionally, the Owner might consider extending the Contractor’s one year correction period under A201–2007 SP Section 12.2.2.1 taking into consideration the estimated date when verification of the Sustainable Objective will occur. If the Owner desires to extend the corrections period, Section 12.2.2.1 of A201–2007 SP can be modified by deleting the reference to one year and inserting a reference to an agreed-upon correction period.

#### **Final Completion**

Final completion of the Project under A201–2007 SP occurs when the Contractor’s Work has been completed in accordance with the terms and conditions of the Contract Documents and the entire balance found to be due the Contractor, and noted in the final Certificate for Payment, is due and payable. Final completion of the Project is complicated by the fact that verification that the Project has achieved the Sustainable Objective may not occur until sometime after Substantial Completion. Energy Star certification, for example, is not issued until a full year of energy usage data has been compiled for the building. In many instances, the Contractor may have completed the punch list and performed all of its obligations under the Contract Documents. Here again, the Performance Bond will provide a surety that will obtain performance of the Contractor’s Work under the Contract or pay a sum of money, up to the penal sum of the bond, so that the Work may be performed by others. An extended correction period can assure that the Contractor is available to correct defective Work.

**A201 SP ARTICLE 9, PAYMENTS AND COMPLETION**

**§ 9.10.1** . . . The Architect’s final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor’s being entitled to final payment have been fulfilled. Verification that the Project has achieved the Sustainable Objective, or the actual achievement of the Sustainable Objective, shall not be a condition precedent to issuance of the final Certificate for Payment.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days’ prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) all Sustainability Documentation required from the Contractor by the Contract Documents, (5) consent of surety, if any, to final payment and (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys’ fees.

**Insurance and Bonds**

Insurance carriers are working to educate and inform their insureds about the risks of sustainable design and construction. Consult with your carrier for recommendations regarding language that should be included in contracts to minimize potential claims and avoid assuming uninsured risk on sustainable projects.

Insurance products for Owners specifically tailored to sustainable projects have generally been limited to property insurance. Although no changes have been made in A201–2007 SP, Owners may want to consider some of the recently released property insurance policies that are available for sustainable projects. Some of these insurance policies will allow the Owner to replace a damaged existing building with equivalent sustainable products instead of standard building materials. Others allow the Owner to rebuild an existing project to achieve a sustainability certification where the original building was not certified. Other insurance policies will allow for reconstruction of existing sustainable buildings using new or revised sustainability standards. Owners should discuss available insurance products with their carriers and select insurance that will best meet the owner’s needs.

In situations where the Contractor has assumed professional liability for some portion of the project, the Contractor should consider professional liability insurance. As with the Architect, the Contractor’s professional liability insurance will likely exclude coverage for contractual guarantees or warranties. In addition, Contractors providing performance bonds or builder’s risk coverage on sustainable projects should be mindful of any exclusions for sustainable construction included in the bonds or insurance policies.

## Claims and Disputes

**Consequential Damages.** Owners often elect to include Sustainable Measures in their Projects for reasons other than increasing the environmental performance of the building. Many jurisdictions offer tax incentives for sustainably built buildings or offer expedited permitting. Owners may also incorporate Sustainable Measures to increase the marketability of the building, increase the public image of the company, decrease energy use or increase worker productivity. If a Project does not meet its Sustainable Objective, the Owner may claim to have sustained damages arising from the failure to realize these ancillary benefits. These types of damages are often difficult to anticipate, quantify, or prove. For example, it is difficult to determine what damages may arise if the Owner alleges that its employees are not productive and motivated because the building failed to achieve a specific Sustainable Measure or did not achieve the Sustainable Objective.

Because it is unlikely that any one of the Project participants will be solely responsible for providing a sustainable building or achieving a Sustainability Certification, liability for consequential damages may be difficult to allocate. For this reason, users are cautioned against executing any AIA Contract Document that has been modified to eliminate the mutual waiver of consequential damages language.

The mutual waiver of consequential damages included in A201–2007 SP and other AIA Documents includes all consequential damages regardless of the specific circumstances of the Project. However, A201–2007 SP has been modified to include additional language addressing specific or unique concerns related to sustainable projects.

### A201 SP ARTICLE 15, CLAIMS AND DISPUTES

**§ 15.1.6.3** Damages resulting from failure of the Project to achieve the Sustainable Objective or one or more of the Sustainable Measures including unachieved energy savings, unintended operational expenses, lost financial or tax incentives, or unachieved gains in worker productivity.

**Limitation of Liability.** The Contractor’s liability for damages if the project fails to meet the Sustainable Objective can be limited by use of a limitation of liability provision. Use of such a provision might be considered if the Owner will not agree to the waiver of consequential damages or the Contractor’s disclaimer of a warranty. A limitation of liability provision will place parameters around a loss and protect the contractor from a potential loss that is difficult to quantify.

Such a provision would normally appear in the Owner/Contractor Agreement; for example, space is provided in AIA Document A101–2007 SP Section 8.6 for insertion of other terms applicable to the Contract. However, Subcontractors and others should be aware of such a provision; therefore it is not unusual for this requirement to be set out in the Supplementary Conditions.

AIA Document B503™–2007 includes a detailed discussion of [limitations of liability under Section 15](#). A limitation of liability provision should not be included as Supplementary Conditions without review by the Owner’s attorney and concurrence of the Owner. Repetition should be avoided. If the provision is written in the Supplementary Conditions, a cross-reference should appear in the Agreement between the Owner and Contractor. In multiple-prime contracting, the Owner should include appropriate provisions addressing limitation of liability in the multiple prime contracts.

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## Chapter 7

### A401–2007 SP, Agreement Between Contractor and Subcontractor

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For a sustainable project, it may be necessary for the Contractor to hire subcontractors with expertise in specific areas of the project related to sustainable construction. Like all projects, sustainable projects require the careful development and coordination of the scope of Work to be provided by each of the respective subcontractors.

AIA Document A401™–2007 SP, Standard Form of Agreement Between Contractor and Subcontractor, for use on a Sustainable Project, is a standard form of agreement to be used by the Contractor and the Subcontractor on a sustainable project that establishes their responsibilities to each other and their mutual rights under the Agreement. A401–2007 SP adopts by reference AIA Document A201™–2007 SP, General Conditions of the Contract for Construction for use on a Sustainable Project, and a pre-existing Owner/Contractor Agreement known as the Prime Contract. AIA Document A401–2007 SP utilizes a flow-down provision, at Article 2, to incorporate the obligations and responsibilities that the Owner and Contractor have with respect to each other in the Prime Contract and extend those obligations and responsibilities, respectively, to the Contractor and the Subcontractor.

Article 8 of A401–2007 SP requires the Contractor and the Subcontractor to describe the portion of the Work for which the Subcontractor is responsible. Once the Subcontractor’s portion of the Work has been defined, the flow-down provision requires the Subcontractor to assume toward the Contractor all obligations and responsibilities that the Contractor assumes toward the Owner in the Prime Contract as applicable to the Subcontractor’s portion of the Work. Therefore, any Sustainable Measures required of the Contractor in the Sustainability Plan that are contained in the Contractor’s portion of the Work would become the responsibility of the Subcontractor.

Given this flow down of responsibilities, the Contractor should clearly define the Subcontractor’s portion of the Work. The Contractor should also specify any limitations or conditions on the Subcontractor’s services. With this understanding of the Contractor’s expectations of the Subcontractor, there were very few provisions of the Subcontract agreement that required modification in developing the Sustainable Projects version. Each of the changes is discussed below.

Section 4.4 has been modified to require that the Subcontractor recycle, reuse, remove or dispose of materials as required by the Contract Documents and as necessary to achieve the Sustainable Objective. These changes have been made so that A401–2007 SP is consistent with changes made in A201–2007 SP.

#### **A401 SP ARTICLE 9, SUBCONTRACTOR**

##### **§ 4.4 Cleaning Up**

**§ 4.4.1** The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors. The Subcontractor shall also recycle, reuse, remove or dispose of materials as required by the Contract Documents.

Additionally, Section 4.4.2 has been modified to require the Subcontractor, in accordance with the Subcontract Documents, to prepare a construction waste management and disposal plan that sets forth the procedures and processes for salvaging, recycling or disposing of construction waste generated from the Project.

**A401 SP ARTICLE 9, SUBCONTRACTOR**

**§ 4.4.2** The Subcontractor, in accordance with the Subcontract Documents, shall, to the extent applicable to Subcontractor’s Work, prepare and submit to the Contractor a construction waste management and disposal plan setting forth the procedures and processes for salvaging, recycling or disposing of construction waste generated from the Project.

As with the Architect and Contractor, the success of a sustainable Project is dependent on the work of all participants and cannot be guaranteed by any one party. This section states that the Subcontractor will perform the Sustainable Measures required by the Subcontract Documents, but does not provide a guarantee or warranty under Section 4.5 that the Project will achieve the Sustainable Objective. This language is not intended to absolve the Subcontractor of liability for failing to perform in accordance with the Subcontract Documents.

**A401 SP ARTICLE 9, SUBCONTRACTOR**

**§ 4.5.2** The Subcontractor shall perform the Sustainable Measures required to be performed by the Subcontractor in accordance with the Subcontract Documents; however, nothing contained in this Section 4.5 shall be construed as a guarantee or warranty by the Subcontractor that the Project will achieve the Sustainable Objective.

A clear understanding of the Sustainable Measures included in the portion of the Work for which the Subcontractor is responsible will assist the Subcontractor in meeting the Sustainable Measures and avoiding disputes. The parenthetical instruction located in Article 8 has been revised to remind users that a description of the Sustainable Measures that apply to the Work of the Subcontract should be included in the description of the Subcontractor’s Work.

**A401 SP ARTICLE 9, THE WORK OF THIS SUBCONTRACT**

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.

*(Insert a precise description of the Work of this Subcontract, including a description of the Sustainable Measures in the Sustainability Plan applicable to the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)*

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## Chapter 8

### Other Delivery Models

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The concepts discussed in this Guide are presented in the context of the current AIA Sustainable Projects documents in the Conventional (A201) Family. The A201 family forms the basis on which other AIA documents families are drafted. Therefore, many of the concepts discussed in this Guide may be applied to AIA Contract Documents for other delivery models, such as Design-Build, Construction Management or Integrated Project Delivery.

The Sustainable Projects documents are based on the design-bid-build delivery model because these documents (namely A201) form the back bone of all AIA Contract Documents. In many instances, a project may benefit from a delivery model such as integrated project delivery, design-build or construction management.

Increasing coordination among all parties on a sustainable project can be an effective way to achieve the owner's goals and increase project success for all participants. However, this Guide does not endorse any specific delivery model as the most appropriate model for sustainable building projects. Users are encouraged to consider all available delivery models and choose the model best suited for the particular project considering the owner's goals and budget. Below is a brief discussion of some of the other delivery models addressed by AIA Contract Documents: Construction Management, Design-Build, and Integrated Project Delivery.

#### Construction Management

AIA Contract Documents separates its Construction Management 4 documents into two distinct families; Construction Manager as Adviser and Construction Manager as Constructor. Each of these families offers unique opportunities for the sustainable building project.

**Construction Manager as Adviser (CMA).** Under the AIA's Construction Manager as Adviser documents, the Owner enters into three separate contracts; the Owner/Architect Agreement (B132™–2009), the Owner/Construction Manager as Adviser Agreement (C132™–2009) and the Owner/Contractor Agreement (A132™–2009). The General Conditions for these agreements is A232™–2009. The Owner/Architect and Owner/Contractor Agreements are similar to the corollary agreements in the Conventional Family of documents with added recognition of the unique role the Construction Manager plays in this delivery model.

Under C132–2009, the Construction Manager is not hired to construct the Project. Instead, the Construction Manager is hired to advise the Owner prior to the start of construction, or preconstruction, and to assist in the management of the Project during construction. During the preconstruction phase, the Construction Manager performs various functions, including cost estimating, scheduling, design review, and advising the Owner regarding constructability, availability of materials and labor, sequencing for phased construction, time requirements for procurement, and installation and construction. The Construction Manager also advises the Owner concerning factors related to construction cost, including costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. During the construction phase of the Project, the Construction Manager's duties include performing contract administration for the contract(s) for

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<sup>4</sup> The AIA will release Sustainable Projects versions of the CMc and CMA documents in the fall of 2013.

construction; administration of multiple prime contractors, if applicable; updating and issuing the Project schedule; scheduling tests and inspections; and assisting in Project close out.

Because of the Construction Manager's close cooperation with the Owner and Architect during the preconstruction phase and the Construction Manager's additional responsibilities during the construction phase, the Construction Manager as Adviser documents offer a unique opportunity for the Construction Manager to assist in the development and implementation of a sustainable design and construction program. During the Preconstruction Phase, the Construction Manager Adviser can review the Sustainability Plan and offer advice on constructability, materials availability, time requirements for procurement, life cycle data, etc. This additional review and coordination will provide an added layer of assurance that the Project is moving in the right direction to achieve the Sustainable Objective. In addition, the Construction Manager Adviser's participation in the Project during Preconstruction allows for a targeted approach to contract administration and scheduling during the construction phase.

**Construction Manager as Constructor (CMc).** Under the AIA's Construction Manager as Constructor documents, the Owner enters into two separate agreements; the Owner/Architect Agreement (typically AIA Document B103™–2007) and the Owner/Construction Manager as Constructor agreement (either A133™–2009 or A134™–2009). The General Conditions document is A201–2007. This delivery model is similar to the Construction Manager as Adviser delivery model with the exception that the Construction Manager also serves as the Constructor of the Project.

The early involvement of the Construction Manager during the design phase allows the Construction Manager to provide input on the Sustainable Measures contemplated, assist in the development of the Sustainability Plan, procure items with longer lead times, and provide a smooth transition when it is time to start construction.

## Design-Build

Under the AIA's Design-Build Family of documents, the Owner enters into one contract (A141™–2004) with a Design-Builder who is obligated to design and construct the Project. The Design-Builder then enters into agreements with a Contractor (A142™–2004), or an Architect (B143™–2004), or both. Often, the Design-Builder may also be the Architect or Contractor for the Project.

Many of the benefits cited for design-build as a Project delivery model such as enhanced communication, single point responsibility, and increased value analysis, may be useful on a sustainable Project. The single point responsibility for design and construction of the Project allows the Design-Builder to carefully coordinate the design with the input of the Architect or Contractor. The allocation of responsibility for certification credits or other Sustainable Measures can be confirmed with the responsible party early in the design. This careful coordination of the design with the activities of the Contractor may allow for the early identification of issues and allow for adjustment of the Sustainable Measures for the Project in order to achieve the Sustainable Objective.

## Integrated Project Delivery

The AIA's Integrated Project Delivery Family is comprised of three sets of documents. The transitional forms are modeled after existing Construction Manager agreements and offer a comfortable first step into Integrated Project Delivery. The Multi-Party Agreement is a single agreement entered into by the Owner, Architect, Contractor and possibly other parties to design and construct a Project utilizing Integrated

Project Delivery. The Single Purpose Entity creates a limited liability company for the purpose of furnishing planning, design, and construction for the Project.

One of the major elements of Integrated Project Delivery is close cooperation among the parties to the Project. Like Construction Management or Design-Build projects, this close cooperation allows for coordination of the Sustainability Plan, responsibility for Sustainable Measures, constructability, materials availability, time requirements for procurement, life cycle data, and other items of importance to this type of Project.

Under the Multi-Party and Special Purpose Entity models, close cooperation is further encouraged by providing for Goal Achievement Compensation for the accomplishment of goals. Goal Achievement Compensation under these models works by allowing the parties to establish goals early in the Project, such as achieving a Sustainable Measure, and paying amounts to each party in the form of goal achievement compensation if that goal is achieved. This provides an added incentive for parties on the Project to work together to achieve the Sustainable Objective.

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## Chapter 9

### Example of a Sustainability Plan

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#### Introduction

The Sustainability Plan describes the Sustainable Objective, identifies the Sustainable Measures and assigns the responsible party for each of the Sustainable Measures. [Definitions of the Sustainability Plan](#) and related terms are contained within A201–2007 SP and are incorporated by reference into the other Sustainable Projects documents. The Architect develops the Sustainability Plan based on the Sustainable Objective. The Sustainability Plan is intended to be a road map toward achievement of the Sustainable Objective. The Sustainability Plan should describe strategies selected to achieve each Sustainable Measure, and establish metrics that will demonstrate completion of each Sustainable Measure, such as the types of testing necessary, as well as the party responsible for verification that those metrics have been satisfied.

An Example of a Sustainability Plan is included as Appendix F to this Guide. The example was developed to show what a typical Sustainability Plan might include. The example of a Sustainability Plan is a table for listing each of the targeted Sustainable Measures and the allocation of responsibility for each of the Sustainable Measures to one or more of the Project participants. Development of a standard Sustainability Plan applicable to all Projects may prove difficult because of the vast diversity in the requirements of the differing Sustainability Certifications, jurisdictional requirements and Owner goals. This example may be used as a starting point for developing an appropriate Project specific Sustainability Plan. The table parameters will need to be modified based on the specifics of each sustainable Project.

The following is a description of each section of the example of a Sustainability Plan and samples of how the Sustainability Plan may be completed on differing types of sustainable Projects.

#### Cover Page

The cover page includes fill points for identification of the Project to which the Sustainability Plan applies, identification of the Owner and Architect, and a statement of the Sustainable Objective for the Project. The same Project description should be used as is used in the Project agreement, such as the Owner/Architect Agreement. The Sustainable Objective will often be the same as that included in the Initial Information of the Owner/Architect Agreement. However, if, during the design process, the Sustainable Objective has been modified, the current Sustainable Objective should be described in the Sustainability Plan.

#### *Example of a Sustainability Plan*

**PROJECT:** *(Name and location or address)*

**THE OWNER:**  
*(Name, legal status and address)*

**THE ARCHITECT:**  
*(Name, legal status and address)*

[The **SUSTAINABLE OBJECTIVE** for the Project:  
*(Insert a description of the Sustainable Objective for the Project.)*

### Article 1 Design Phase

Article 1 addresses the design phase to which the Sustainability Plan applies. Because B101–2007 SP requires the Architect to notify the Owner of changes to the Sustainability Plan and request Owner approval at the conclusion of each design phase, this check box has been added to aid in the easy identification of the design phase for which the Sustainability Plan is submitted for approval. However, note that the Sustainability Plan may not be updated at each subsequent design phase. If changes to the Sustainability Plan have not been made between the Schematic Design Phase and the Design Development Phase, for example, there may be no need to seek Owner approval at the Design Development Phase.

#### ARTICLE 1 DESIGN PHASE

Select the design phase for which this Sustainability Plan is submitted for review and approval by the Owner. *(The Sustainability Plan will only be submitted for approval at the conclusion of design phases subsequent to the Schematic Design Phase if changes are made that require approval by the Owner in accordance with the Owner/Architect Agreement.)*

- Schematic Design
- Design Development
- Construction Documents

### Article 2 Sustainable Measures

Article 2 provides a table on which to list the Sustainable Measures required to achieve the Sustainable Objective, identify the party responsible for each Sustainable Measure, and provide a detailed description of each Sustainable Measure. The table consists of five columns:

**Item Number.** Each Sustainable Measure listed in the Sustainability Plan should be numbered to provide easy reference for the Project participants.

<b>Item Number</b>	<b>Sustainable Measure</b> <i>List each Sustainable Measure required to achieve the Sustainable Objective. Where the Sustainable Objective includes achievement of a Sustainability Certification, the list may include a description of each credit or point available toward the Sustainability Certification.</i>	<b>Point or Credit Requirements</b> <i>Indicate the value and status of each point or credit listed in the Sustainable Measures Column and as defined below.</i>				<b>Responsible Party</b> <i>Indicate each party's responsibility as follows:</i> <b>P</b> Party primarily responsible for the Sustainable Measure <b>S</b> Provides support for the Sustainable Measure as described in the Sustainable Measure Description )				<b>Sustainable Measure Description</b> <i>Describe the Sustainable Measure, including (1) implementation strategies selected to achieve the Sustainable Measure; (2) the specific details about design reviews, testing or metrics to verify achievement of the Sustainable Measure; and (3) the Sustainability Documentation required.</i> <i>Insert a description below or in an exhibit attached to this document and identified below.</i>

**Sustainable Measure.** This column is used to list each Sustainable Measure necessary to achieve the Sustainable Objective. When the Sustainable Objective includes a Sustainability Certification, the parties may choose to list all points or credits available under the Sustainability Certification program, including those points or credits considered rejected, and those points and credits identified as contingent which the parties may choose to pursue later, as of the date of the Sustainability Plan is prepared and submitted to the Owner for review and approval.

<b>Item Number</b>	<b>Sustainable Measure</b> <i>List each Sustainable Measure required to achieve the Sustainable Objective. Where the Sustainable Objective includes achievement of a Sustainability Certification, the list may include a description of each credit or point available toward the Sustainability Certification.</i>	<b>Point or Credit Requirements</b> <i>Indicate the value and status of each point or credit listed in the Sustainable Measures Column and as defined below.</i>				<b>Responsible Party</b> <i>Indicate each party's responsibility as follows:</i> <b>P</b> Party primarily responsible for the Sustainable Measure <b>S</b> Provides support for the Sustainable Measure as described in the Sustainable Measure Description )				<b>Sustainable Measure Description</b> <i>Describe the Sustainable Measure, including (1) implementation strategies selected to achieve the Sustainable Measure; (2) the specific details about design reviews, testing or metrics to verify achievement of the Sustainable Measure; and (3) the Sustainability Documentation required.</i> <i>Insert a description below or in an exhibit attached to this document and identified below.</i>

**Point or Credit Requirements.** This column is used when the Sustainable Objective includes a point or credit based Sustainability Certification. On projects where the Sustainable Objective does not include a Sustainability Certification, this section may be omitted or modified to include other information.

<b>Item Number</b>	<b>Sustainable Measure</b> <i>List each Sustainable Measure required to achieve the Sustainable Objective. Where the Sustainable Objective includes achievement of a Sustainability Certification, the list may include a description of each credit or point available toward the Sustainability Certification.</i>	<b>Point or Credit Requirements</b> <i>Indicate the value and status of each point or credit listed in the Sustainable Measures Column and as defined below.</i>				<b>Responsible Party</b> <i>Indicate each party's responsibility as follows: P Party primarily responsible for the Sustainable Measure S Provides support for the Sustainable Measure as described in the Sustainable Measure Description )</i>				<b>Sustainable Measure Description</b> <i>Describe the Sustainable Measure, including (1) implementation strategies selected to achieve the Sustainable Measure; (2) the specific details about design reviews, testing or metrics to verify achievement of the Sustainable Measure; and (3) the Sustainability Documentation required.  Insert a description below or in an exhibit attached to this document and identified below.</i>
		Available	Expected	Rejected	Contingent	Owner	Architect	Contractor	Other: CM, D-B, etc.	

Each of the Points should be listed in the appropriate sub-column to indicate the point's status:

**Available**—Indicates the total number of points or credits available for the item number.

**Expected**—Indicates the total points or credits expected for each line item. The expected column may include a number equal to or less than the number indicated as available.

**Rejected**—Indicates the number of points or credits for each line item that will not be pursued or that are unattainable for the project. If a point or credit is rejected entirely, this number will equal the number included in the Available column.

**Contingent**—Indicates the total number of points or credits held in contingency that could be pursued with additional cost or effort.

**Responsible Party.** This column identifies the party responsible for each Sustainable Measure. Some parties will be designated as taking primary responsibility and others to provide support services. For example, the Architect may have primary responsibility for designing and specifying systems that meet a certain standard of energy reduction while the Owner plays a supporting role in operating those systems in a manner consistent with the design specifications.

<b>Item Number</b>	<b>Sustainable Measure</b> <i>List each Sustainable Measure required to achieve the Sustainable Objective. Where the Sustainable Objective includes achievement of a Sustainability Certification, the list may include a description of each credit or point available toward the Sustainability Certification.</i>	<b>Point or Credit Requirements</b> <i>Indicate the value and status of each point or credit listed in the Sustainable Measures Column and as defined below.</i>				<b>Responsible Party</b> <i>Indicate each party's responsibility as follows: P Party primarily responsible for the Sustainable Measure S Provides support for the Sustainable Measure as described in the Sustainable Measure Description )</i>				<b>Sustainable Measure Description</b> <i>Describe the Sustainable Measure, including (1) implementation strategies selected to achieve the Sustainable Measure; (2) the specific details about design reviews, testing or metrics to verify achievement of the Sustainable Measure; and (3) the Sustainability Documentation required.  Insert a description below or in an exhibit attached to this document and identified below.</i>
		Available	Expected	Rejected	Contingent	Owner	Architect	Contractor	Other: CM, D-B, etc.	

**Sustainable Measure Description.** This column is used to provide a detailed description of each Sustainable Measure.

<b>Item Number</b>	<b>Sustainable Measure</b> <i>List each Sustainable Measure required to achieve the Sustainable Objective. Where the Sustainable Objective includes achievement of a Sustainability Certification, the list may include a description of each credit or point available toward the Sustainability Certification.</i>	<b>Point or Credit Requirements</b> <i>Indicate the value and status of each point or credit listed in the Sustainable Measures Column and as defined below.</i>				<b>Responsible Party</b> <i>Indicate each party's responsibility as follows: P Party primarily responsible for the Sustainable Measure S Provides support for the Sustainable Measure as described in the Sustainable Measure Description )</i>				<b>Sustainable Measure Description</b> <i>Describe the Sustainable Measure, including (1) implementation strategies selected to achieve the Sustainable Measure; (2) the specific details about design reviews, testing or metrics to verify achievement of the Sustainable Measure; and (3) the Sustainability Documentation required.  Insert a description below or in an exhibit attached to this document and identified below.</i>
		Available	Expected	Rejected	Contingent	Owner	Architect	Contractor	Other: CM, D-B, etc.	

The description of each Sustainable Measure might include

- the implementation strategies selected,
- the specific details of design reviews,
- the testing or metrics necessary to verify achievement of the Sustainable Measure, and
- a description of the Sustainability Documentation required to be submitted for the Sustainable Measure.

### Completed Examples

The table can provide the flexibility needed for use with various Sustainability Certifications or for projects which do not include a Sustainability Certification. Examples for some of the different possibilities:

#### LEED

Item Number	Sustainable Measure <i>List each Sustainable Measure required to achieve the Sustainable Objective. Where the Sustainable Objective includes achievement of a Sustainability Certification, the list may include a description of each credit or point available toward the Sustainability Certification.</i>	Point or Credit Requirements <i>Indicate the value and status of each point or credit listed in the Sustainable Measures Column and as defined below.</i>				Responsible Party <i>Indicate each party's responsibility as follows: P Party primarily responsible for the Sustainable Measure S Provides support for the Sustainable Measure as described in the Sustainable Measure Description )</i>				Sustainable Measure Description <i>Describe the Sustainable Measure, including (1) implementation strategies selected to achieve the Sustainable Measure; (2) the specific details about design reviews, testing or metrics to verify achievement of the Sustainable Measure; and (3) the Sustainability Documentation required.  Insert a description below or in an exhibit attached to this document and identified below.</i>
		Available	Expected	Rejected	Contingent	Owner	Architect	Contractor	Other: CM, D-B, etc.	
	<b>Sustainable Sites</b>									
Prereq 1	Construction Activity Pollution Prevention	Y	Y					P		See LEED Reference Guide for Green Building Design and Construction
Credit 1	Site Selection	1	1			P				See LEED Reference Guide for Green Building Design and Construction
Credit 2	Development Density and Community Connectivity	5		5						See LEED Reference Guide for Green Building Design and Construction

#### IgCC

Item Number	Sustainable Measure <i>List each Sustainable Measure required to achieve the Sustainable Objective. Where the Sustainable Objective includes achievement of a Sustainability Certification, the list may include a description of each credit or point available toward the Sustainability Certification.</i>	Status of Code-Mandated Measure <i>Indicate the value and status of each point or credit listed in the Sustainable Measures Column and as defined below.</i>				Responsible Party <i>Indicate each party's responsibility as follows: P Party primarily responsible for the Sustainable Measure S Provides support for the Sustainable Measure as described in the Sustainable Measure Description )</i>				Sustainable Measure Description <i>Describe the Sustainable Measure, including (1) implementation strategies selected to achieve the Sustainable Measure; (2) the specific details about design reviews, testing or metrics to verify achievement of the Sustainable Measure; and (3) the Sustainability Documentation required.  Insert a description below or in an exhibit attached to this document and identified below.</i>
		Available	Expected	Rejected	Contingent	Owner	Architect	Contractor	Other: CM, D-B, etc.	
	<b>Chapter 3 – Jurisdictional Requirements and Life Cycle Assessment</b>									
302.1	Requirements determined by jurisdiction (Table 302.1)						P			Confirm with Local Jurisdiction. Requires obtaining information from local jurisdiction regarding adoption of Table 302.1
303.1	Whole Building life cycle assessment					P				Requirements for execution of a whole building life cycle assessment
	<b>Chapter 4 – Site Development and Land Use</b>									
401.2	Predesign site inventory and assessment						P			An inventory and assessment of natural resources and baseline conditions of the building site shall be submitted with the construction documents
402.2.1	Flood hazard area prevention, general					P	S			Confirm with Local Jurisdiction. Prohibits development in flood hazard areas established pursuant to local land use authority

Notice that in the example above, the column labeled “point or credit requirement” has been changed to “status of code mandated measure.” This is necessary because the requirements of the IgCC, like other codes, that have been legally adopted by a jurisdiction are mandatory and not subject to selection by the parties.

**Owner Approved Sustainable Measures (non-code, non-Sustainability Certification)**

Item Number	Sustainable Measure <i>List each Sustainable Measure required to achieve the Sustainable Objective. Where the Sustainable Objective includes achievement of a Sustainability Certification, the list may include a description of each credit or point available toward the Sustainability Certification.</i>	Point or Credit Requirements <i>Indicate the value and status of each point or credit listed in the Sustainable Measures Column and as defined below.</i>				Responsible Party <i>Indicate each party's responsibility as follows: P Party primarily responsible for the Sustainable Measure S Provides support for the Sustainable Measure as described in the Sustainable Measure Description )</i>				Sustainable Measure Description <i>Describe the Sustainable Measure, including (1) implementation strategies selected to achieve the Sustainable Measure; (2) the specific details about design reviews, testing or metrics to verify achievement of the Sustainable Measure; and (3) the Sustainability Documentation required.  Insert a description below or in an exhibit attached to this document and identified below.</i>
		Available	Expected	Rejected	Contingent	Owner	Architect	Contractor	Other: CM, D-B, etc.	
1	Air Quality						P	S		Utilize low VOC paints, flooring, sealants and coatings
2	Sustainable/Low Carbon Footprint Materials						P	S		Materials that have recycled content and are manufactured locally
3	Waste Control							P		Waste Management during construction
4	Energy efficient systems						P	S		Highly efficient HVAC and plumbing systems
5	Building orientation					S	P			Site building for maximum solar benefit

**Owner’s Approval**

This section requires the Owner to sign and date the document to approve the Sustainability Plan as of the designated design phase.

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# Appendix

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- Appendix A** [AIA Document Comparative: A101™–2007 and A101™–2007 SP, Agreement Between Owner and Contractor](#)
- Appendix B** [AIA Document Comparative: A201™–2007 and A201™–2007 SP, General Conditions of the Contract for Construction](#)
- Appendix C** [AIA Document Comparative: A401™–2007 and A401™–2007 SP, Agreement Between Contractor and Subcontractor](#)
- Appendix D** [AIA Document Comparative: B101™–2007 and B101™–2007 SP, Agreement Between Owner and Architect](#)
- Appendix E** [AIA Document Comparative: C401™–2007 and C401™–2007 SP Agreement Between Architect and Consultant](#)
- Appendix F** [Example of a Sustainability Plan](#)
- Appendix G** [Special Terms and Conditions Imposed by Third Party Certification or Rating Entities \(“Certification Authorities”\), and in particular GBCI and USGBC, an article by Kenneth W. Cobleigh, Esq., Managing Director and Counsel, AIA Contract Documents](#)
- Appendix H** [AIA Resources for Sustainable Design and Construction Projects](#)

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