



AIA[®] Document E204[™] – 2017

Sustainable Projects Exhibit

This Exhibit dated the ____ day of ____ in the year ____ is incorporated into the agreement (the “Agreement”) between the Parties for the following Project:

(Name and location or address of the Project)

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 This Exhibit provides for the establishment of the services of the Architect, the Work of the Contractor, and requirements and services of the Owner, where the Project includes achievement of a Sustainable Objective.

§ 1.2 Definitions

§ 1.2.1 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, to enhance the health and well-being of building occupants, or to improve energy efficiency. The Sustainable Objective is identified in the Sustainability Plan.

§ 1.2.2 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 each have responsibility for the Sustainable Measure(s) allocated to them in the Sustainability Plan.

§ 1.2.3 Sustainability Plan

The Sustainability Plan is a Contract Document that 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.

§ 1.2.4 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.

§ 1.2.5 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.

§ 1.2.6 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.

§ 1.3 Set forth below any incentive programs related to the Sustainable Objective the Owner intends to pursue, any deadlines for receiving the incentives, and any requirements related to the incentive programs that are applicable to the Architect or the performance of the Architect's services:
(Identify incentive programs the Owner intends to pursue and deadlines for submitting or applying for the incentive program.)

§ 1.4 The Parties agree to incorporate this Exhibit into the agreements with the project participants performing services or Work in any way associated with the Sustainable Objective.

ARTICLE 2 ARCHITECT

§ 2.1 Scope of Architect's Sustainability Services

The Architect shall provide the Sustainability Services described in this Article 2. The Architect's performance of the services set forth in this document is based upon the Initial Information included in the Owner-Architect Agreement.

§ 2.2 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 this Article 2. 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.

§ 2.3 Sustainability Workshop

As soon as practicable, but not later than the conclusion of the Schematic Design Phase Services, the Architect shall conduct a Sustainability Workshop with the Owner, the Owner's consultants, and the Architect's consultants, during which the participants will: review and discuss potential Sustainability Certifications; establish the Sustainable Objective; discuss potential Sustainable Measures; examine strategies for implementation of the Sustainable Measures; and discuss the potential impact of the Sustainable Measures on the Project schedule, the Owner's program, and the Owner's budget for the Cost of the Work.

§ 2.4 Sustainability Plan Services

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

§ 2.4.2 As part of the Architect's submission of the Schematic Design Documents in accordance with the Owner-Architect Agreement, the Architect shall submit the Sustainability Plan prepared in accordance with Section 2.4.1, to the Owner, and request the Owner's approval.

§ 2.4.3 As part of the Architect's submission of the Design Development Documents and Construction Documents in accordance with the Owner-Architect Agreement, the Architect shall advise the Owner of any adjustments to the Sustainability Plan, and request the Owner's approval.

§ 2.4.4 The Architect shall perform those Sustainable Measures identified as the responsibility of the Architect in the approved Sustainability Plan and any approved changes to the Sustainability Plan.

§ 2.4.5 Subject to Section 2.9.2, the Architect shall make adjustments to the Sustainability Plan as the design and construction of the Project progresses.

§ 2.5 Design Phases

§ 2.5.1 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.

§ 2.5.2 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 whether the materials or equipment will perform as represented by the manufacturer or supplier. The Architect shall discuss with the 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 Architect shall be permitted to rely on the manufacturer's or supplier's 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.

§ 2.6 Construction Phase

§ 2.6.1 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 the Owner-Architect Agreement 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 will affect the achievement of Sustainable Measures. The Architect shall meet with the Owner and Contractor to discuss remedies or, where appropriate, alternatives to achieve the Sustainable Measures.

§ 2.6.2 If the Architect determines that a proposed change in the Work would materially impact a Sustainable Measure or the Sustainable Objective, the Architect shall notify the Owner and, upon the Owner's written authorization, further investigate such change.

§ 2.6.3 At Substantial Completion, the Architect shall forward to the Owner all Sustainability Documentation prepared by the Contractor in accordance with the Contract Documents, except for Sustainability Documentation which by its nature must be completed after Substantial Completion.

§ 2.6.4 The Owner's payment of the Architect's final invoice does not relieve the Architect's obligation to fulfill its responsibilities related to achieving the Sustainable Objective.

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

§ 2.7.1 If the Sustainable Objective includes a Sustainability Certification, the Architect, as agent for the Owner, shall perform the services set forth in this Section 2.7.

§ 2.7.2 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 and shall be credited against any initial payment received pursuant to the Owner-Architect Agreement.

§ 2.7.3 The Architect shall collect the Sustainability Documentation from the Owner and Contractor; organize and manage the Sustainability Documentation; and, subject to Section 2.9.2, submit the Sustainability Documentation to the Certifying Authority as required for the Sustainability Certification process.

§ 2.7.4 Subject to Section 2.9.2, 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.

§ 2.7.5 Subject to Section 2.9.2, 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.

§ 2.7.6 Subject to Section 2.9.2, the Architect shall prepare responses to comments or questions received from the Certifying Authority, and submit additional required documentation.

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

§ 2.8 Copyrights and Licenses

§ 2.8.1 Solely for the purpose of obtaining or maintaining the Sustainability Certification, the Architect grants to 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 licenses granted in this Section are valid only if the Owner substantially performs its obligations under the Owner-Architect Agreement, including prompt payment of all sums when due.

§ 2.8.2 Submission or distribution of Instruments of Service to meet 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 under the Owner-Architect Agreement.

§ 2.9 Additional Services

§ 2.9.1 Upon recognizing the need to perform the following Additional Services, in addition to those listed in the Owner-Architect Agreement, 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 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
- .2 Assistance to the Owner or Contractor with preparation of Sustainability Documentation, for which the Owner or Contractor is responsible pursuant to the Sustainability Plan.

§ 2.9.2 The Architect shall provide services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 _____ (___) adjustments to the Sustainability Plan
- .2 _____ (___) meetings during the Design and Construction Phases required to define, develop and incorporate the Sustainable Measures into the Contract Documents
- .3 _____ (___) submittals to the Certifying Authority
- .4 _____ (___) responses to the Certifying Authority's comments and questions
- .5 _____ (___) appeals to the Certifying Authority pursuant to Section 2.7.5
- .6 _____ (___) meetings with the Owner and Contractor, pursuant to Section 2.6.1, to discuss remedies or, where appropriate, alternatives to achieve the Sustainable Measures due to deviations from the Contract Documents or defects or deficiencies in the Contractor's Work.

ARTICLE 3 CONTRACTOR

§ 3.1 The Contractor shall perform those Sustainable Measures identified as the responsibility of the Contractor in the Sustainability Plan.

§ 3.2 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.

§ 3.3 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.

§ 3.4 The Contractor shall be responsible for 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, but in no event more than 60 days after Substantial Completion, so that the Architect may submit the Sustainability Documentation to the Certifying Authority.

§ 3.5 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents and 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.

§ 3.6 The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of 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 Sustainability Plan.

§ 3.7 Construction Waste Management

The Contractor, in accordance with the Contract Documents, shall prepare and submit to the Architect and Owner 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. The Contractor shall recycle, reuse, remove or dispose of materials as required by the Contract Documents.

§ 3.8 Substantial Completion

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 a Certificate of Substantial Completion. Except for that portion of the Sustainability Documentation that 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.

§ 3.9 Final Completion

§ 3.9.1 All Sustainability Documentation required from the Contractor by the Contract Documents shall be submitted to the Architect before final payment or any remaining retained percentage shall become due.

§ 3.9.2 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. Final payment does not relieve the Contractor's obligation to fulfill its responsibilities related to achieving the Sustainable Objective.

ARTICLE 4 OWNER

§ 4.1 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.

§ 4.2 The Owner shall provide to the Contractor and Architect any information requested by the Contractor or 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.

§ 4.3 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.

§ 4.4 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.

§ 4.5 The Owner shall provide the services of a commissioning agent who shall be responsible for commissioning of the Project, or the Owner may engage the Architect to provide commissioning services as an Additional Service.

ARTICLE 5 CLAIMS AND DISPUTES

The Owner, Contractor and Architect waive claims against each other for consequential damages resulting from failure of the Project to achieve the Sustainable Objective or one or more of the Sustainable Measures.

ARTICLE 6 MISCELLANEOUS PROVISIONS

§ 6.1 The Owner, Contractor and Architect acknowledge that achieving the Sustainable Objective is dependent on many factors beyond the Contractor's and Architect's control, such as the Owner's use and operation of the Project; the work or services provided by the Owner's other contractors or consultants; or interpretation of credit requirements by a Certifying Authority. Accordingly, neither the Architect nor the Contractor warrant or guarantee that the Project will achieve the Sustainable Objective.

§ 6.2 This Sustainable Projects Exhibit shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor or (3) between the Owner and the Architect's consultants.

ARTICLE 7 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Sustainable Project Exhibit, if any, are as follows:

Sample