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AIA Documents for Use on Sustainable Projects



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In May 2011, the AIA published AIA Document D503™–2011, Guide for Sustainable Projects, including Agreement Amendments and Supplementary Conditions. D503 was developed for use by owners, contractors and architects interested in learning about new roles, responsibilities and risks involved with sustainable projects and ways to better address them in their contract documents. It served as an educational tool, discussing key issues related to sustainable design and construction, and also provided model language that parties could use to modify AIA Contract Documents for use on sustainable projects.

D503 was the initial step in the development of documents for use in sustainable design and construction. The next step was the development of coordinated agreements. In May 2012, the AIA published:

- AIA Document A101™–2007 SP, Owner/Contractor Agreement, for use on a Sustainable Project where the basis of payment is a Stipulated Sum
- AIA Document A201™–2007 SP, General Conditions of the Contract for Construction, for use on a Sustainable Project

- AIA Document A401™–2007 SP, Contractor/Subcontractor Agreement, for use on a Sustainable Project
- AIA Document B101™–2007 SP, Owner/Architect Agreement, for use on a Sustainable Project
- AIA Document C401™–2007 SP, Architect/Consultant Agreement, for use on a Sustainable Project

SP Documents Explained

The Sustainable Projects (SP) documents are based on underlying documents in the Conventional (A201) family of AIA Contract Documents, with modifications that address the risks, responsibilities and opportunities unique to projects involving substantial elements of sustainable design and construction (sustainable projects). The SP documents are appropriate for use on a wide variety of sustainable projects, including those in which the owner's Sustainable Objective includes obtaining a Sustainability Certification, such as LEED® (Leadership in Energy and Environmental Design), or those in which the Sustainable Objective is based solely on performance or conservation based criteria. In addition, as new "green" codes are developed, the process outlined in the SP documents will help project participants plan to meet the requirements of code compliance.

The SP documents provide a process for successful completion of a sustainable project through the use of special definitions, the allocation of the parties' risks and responsibilities, a scope of architect's services for sustainable projects, and provisions that address specific issues of concern to each party, whether owner, architect or contractor. Taken together, the SP documents provide a fully integrated suite of documents for a design-bid-build project. It should be noted, however, that the concepts discussed in D503 and in the SP documents are largely applicable across other delivery models.

Achieving the Sustainable Objective

While the SP documents are based on the well-known A201 family flagship documents, specific provisions are built into the "SP" versions that develop and implement the process discussed above. AIA Document A201–2007 SP introduces a number of new definitions and terms that are unique to the SP documents (defined terms are designated with capital letters). In addition, AIA Document B101–2007 SP sets forth a new scope of "Architect's Services for Sustainable Projects," that requires the architect to conduct a Sustainability Workshop with the owner and relevant consultants. The outcome of the Sustainability Workshop is the development of a Sustainability Plan that identifies the owner's Sustainable Objective for the project, outlines Sustainable Measures necessary to achieve the Sustainable Objective, and allocates responsibility for each of the Sustainable Measures to the project team member in the best position to perform the Sustainable Measure. In addition, the Sustainability Plan includes information such as testing and implementation strategies necessary to achieve the Sustainable Objective. The requirements of the Sustainability Plan, with the owner's approval, will be further developed as the design for the project progresses and will, as appropriate, ultimately be incorporated into the drawings and specifications. The Sustainability Plan itself is also incorporated as a Contract Document.

Achieving the Sustainable Objective requires that each party perform the Sustainable Measures identified as its responsibility in the Sustainability Plan. The documents contain provisions to make

that responsibility explicit for the owner, architect and contractor. For example, A201–2007 SP § 3.1.2 states that "[t]he 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." Similar provisions are included in B101 SP as related to the owner and architect.

SP Focused Provisions

In addition to providing this process for defining and achieving the Sustainable Objective, the SP documents contain numerous provisions directed to specific risk management concerns of each of the parties. Several of those issues are discussed below.

Substantial Completion

Under AIA Contract Documents, Substantial Completion occurs when the project can be occupied and used for its intended purpose. Because approval by a Certifying Authority may not occur until well after Substantial Completion, the SP documents do not tie Substantial Completion to achievement of the Sustainable Objective. However, A201 SP requires the contractor to prepare and complete the Sustainability Documentation required from the contractor by the Contract Documents, including any Sustainability Documentation required to be submitted after Substantial Completion. If there is concern that the contractor might be responsible, after Substantial Completion or final completion, for completing any other Sustainable Measures that are necessary to achieve the Sustainability Certification, the owner may wish to consider having a performance bond in place or negotiating an extended correction period as added protection to ensure completion.

Instruments of Service

In B101–2007, 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. However, 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

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comply with the documentation requirements. In B101 SP, 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.

Standard of Care

The architect’s standard of care provision was added to the AIA owner-architect agreements in 2007 and conforms to the generally accepted common law standard of care. It provides that “[t]he 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.” This statement of the standard of care was not changed in B101 SP. An extensive discussion of issues related to the architect’s standard of care and sustainable design and construction projects is included in D503–2011, Guide for Sustainable Projects to assist architects with understanding how the evolving nature of sustainable design and construction might affect the services required to conform to the standard of care.

Sustainable Products

The owner’s Sustainable Objective or other project requirements may necessitate use of materials or equipment on the Project that have had limited testing or verification of performance. The architect or its consultants may be unable to confirm the reliability of such products. If the materials or equipment fail to perform in accordance with the manufacturer’s representations, the project may fail to achieve the Sustainable Objective. B101 SP includes a provision that requires the architect to discuss such 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 the owner then chooses to use the product, language included in

B101 SP limits the architect’s liability for a failure of the product to perform in accordance with the manufacturer’s representations.

Substitutions

Substitutions can potentially affect achievement of a Sustainable Measure or the Sustainable Objective. A new section was added to A201 SP to provide a process in which the contractor is required to include, with a substitution request, a written representation identifying any potential effect the substitution may have on achievement of a Sustainable Measure or the Sustainable Objective. In order to make this assessment, the contractor may request that the architect provide information 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.

Sustainable Objective Warranty

Successful achievement of the Sustainable Objective will depend not only on the architect’s design of the project but also on the owner’s use and operation of the project, the work provided by the contractor, the work or services provided by the owner’s other contractors or consultants, or interpretation of credit requirements by a Certifying Authority. Neither the architect nor contractor is in a position to guarantee or warrant that the project will achieve the Sustainable Objective. Accordingly, provisions were included in B101 SP and in A201 SP stating that the architect and contractor are not providing such a guarantee or warranty.

Consequential Damages

The AIA has included mutual waivers of consequential damages in its owner/architect and owner/contractor 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 potentially include such things as unachieved energy savings, unintended operational expenses, lost financial or tax incentives or unachieved gains in worker

productivity. The waiver of consequential damages was modified in B101 SP and A201 SP so that the parties agree that these types of damages are consequential and are waived.

The AIA will continue to develop other documents for use on sustainable design and construction projects by looking at other delivery models and the applicability of these principles to those models. Samples and comparative versions of the SP documents may be obtained at www.aia.org/greendocs. AIA Document D503–2011, Guide for Sustainable Projects, is available to download for free at www.aia.org/sustainableprojectsguide. Additional resources on these and other AIA Contract Documents may be found at www.aia.org/contractdocs/reference.

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