

ConsensusDocs® 310

GREEN BUILDING ADDENDUM

1. GENERAL PRINCIPLES

1.1. The Project Participants acknowledge that the incorporation of Green Measures into the Project affects the roles and responsibilities of the Project Participants and the procedures that each Project Participant is to follow in connection with the Project. The purpose of this Addendum is to set forth such roles, responsibilities and procedures and provide for other appropriate modifications to the Governing Contract and Affiliated Contracts as applicable.

1.2. The duties, rights, responsibilities and obligations set forth in the Governing Contract shall not be affected except as set forth in this Addendum. This Addendum does not effectuate or require a restructuring of contractual relationships or shifting of risks between or among the Project Participants (as hereinafter defined) other than as specifically set forth in this Addendum.

1.3. This Addendum does not create privity of contract or establish any rights or obligations in favor of any third parties or Project Participants, except as between the two parties to the Governing Contract to which this Addendum applies.

1.4. Nothing in this Addendum shall relieve the Design Professional from its obligations or responsibilities, whether under the Governing Contract or applicable law, except to the extent expressly provided herein.

1.5. Nothing in this Addendum shall relieve the Contractor from its obligations or responsibilities, whether under the Governing Contract or applicable law, except to the extent expressly provided herein.

1.6. Nothing in this Addendum shall expand or diminish the extent to which, under applicable law, the Owner warrants the adequacy and/or sufficiency of the design.

1.7. In the event of an inconsistency or conflict between this Addendum and a Governing Contract, this Addendum shall take precedence.

1.8. Unless otherwise specifically addressed in this Addendum, any payment, reimbursement, remuneration or other consideration for each Party's obligations under this Addendum shall be as provided in the applicable Governing Contract.

1.9. Terms used herein shall be as defined in the Governing Contract except as otherwise provided in this Addendum.

1.10. Performance and payment bonds, if any, and insurance required by the Governing Contract shall apply to this Addendum, unless otherwise provided in the performance bond. Nothing in this Addendum is intended to affect any obligation(s) to maintain insurance under a Governing Contract.

1.11. Owner shall have the right to remove and replace any Project Participant as provided in the applicable Governing Contract.

2. DEFINITIONS



- 2.1. "Affiliated Contract" means any contract, other than the Governing Contract, relating to the Project into which an identical Addendum is incorporated.
- 2.2. "Contractor" means the person or entity engaged by Owner pursuant to a Governing Contract between Owner and the Contractor to construct the Project or a portion of the Project. In the event that, pursuant to a Governing Contract, Owner has engaged a Construction Manager to construct the Project or a portion of the Project, Contractor shall mean such Construction Manager.
- 2.3. "Elected Green Measures" means the Green Measures included in the report prepared by GBF and approved by Owner in writing in accordance with Section 6.5 of this Addendum.
- 2.4. "Elected Green Status" means the Green Status elected by Owner in accordance with Article 5 of this Addendum.
- 2.5. "Elected Physical Green Measures" means the Physical Green Measures included in the Elected Green Measures.
- 2.6. "Elected Procedural Green Measures" means the Procedural Green Measures included in the Elected Green Measures.
- 2.7. "Governing Contract" means an agreement between the Owner and a party into which this Addendum is incorporated, but excludes any Affiliated Contract(s).
- 2.8. "Green Building Facilitator" or "GBF" means one or more individuals or a designated entity as identified in Section 4.1 of this Addendum. Section 4.1 permits the option of having a person or entity other than the Design Professional or Contractor serve as the GBF or for the Design Professional or Contractor to serve in that role. To facilitate use of this Addendum in any of these options, this Addendum utilizes the term "GBF" as if it were a separate person or entity. If the Design Professional or Contractor has assumed the role of the GBF, such Design Professional or Contractor and the GBF shall be one and the same. In the event that the Design Professional or Contractor has agreed to serve as the GBF, as used herein "GBF" shall refer to such an Design Professional or Contractor and is not intended to be interpreted otherwise. Such an Design Professional or Contractor shall have all responsibilities and obligations of the GBF hereunder.
- 2.9. "Green Certification Documents" means such reports, documents or other data required by Owner or GBF to apply for, seek or obtain Green Status.
- 2.10. "Green Measures" means that specific performance required of the Project Participants to achieve Green Status as further described in Article 6 of this Addendum.
- 2.11. "Green Status" means a designation or denomination provided by a body or organization, governmental or otherwise, intended to recognize the fact that Green Measures have been used or employed in the design and/or construction of the Project, which designation or denomination may be one of a variety of levels, such as a stated numerical rating or color designation.
- 2.12. "Physical Green Measures" means Green Measures that are incorporated in the Plans and Specifications as part of the design of the Project and that are intended to become a component of the physical Work when constructed.
- 2.13. "Plans and Specifications" shall have the meaning provided in the Governing Contract, or, if not defined therein, shall mean the plans, specifications, drawings and other written or graphic depictions of the Work, the manner in which the Work is to be performed or other requirements applicable to the Work as prepared or issued by Design Professional or a person or entity on behalf of Design Professional.



2.14. "Procedural Green Measures" means those Green Measures that set forth specific means, methods or procedures that are to be followed or employed in the performance of the Work, including the preparation and submission of Green Certification Documents that are not intended to become a component of the physical Work when constructed.

2.15. "Project Participant" shall be, and "Project Participants" shall include, each Party to a Governing Contract or an Affiliated Contract into which this Addendum has been incorporated.

3. GREEN REQUIREMENTS AND PROCEDURES |

3.1. Owner has elected to incorporate Green Measures into the Project so that the Project can achieve (check as applicable):

the Elected Green Status

benefits to the environment or natural resources, either as part of the construction process or during the life cycle, use or maintenance of the Project.

4. GREEN BUILDING FACILITATOR |

4.1. The Owner has appointed the Project Participant whose box is checked as indicated below to serve as GBF, unless and until replaced by Owner:

: Design Professional

: Contractor

Other

Address:

State: Zip Code:

4.2. Unless otherwise set forth in this Addendum or in a Governing Contract, all costs of the GBF to perform its duties under its Governing Contract and this Addendum shall be paid by Owner as provided in the Governing Contract between Owner and the GBF.

4.3. Owner has satisfied itself that GBF has sufficient skill and experience to effectively and timely perform the role of GBF as required under this Addendum, and GBF hereby represents to Owner that it has such skill and experience.

4.4. GBF acknowledges and agrees that neither Owner nor any other Project Participant is relying on any Project Participant other than GBF to perform the responsibilities of the GBF set forth in this Addendum or in the Governing Contract between Owner and the GBF. The foregoing is not intended to expand or diminish the responsibilities of the Design Professional or Contractor, nor is it intended to impose upon the GBF the obligation to prepare reports, documents and/or perform work or activities required of other Project Participants under any Affiliated Contract, Governing Contract or this Addendum.

4.5. The GBF shall coordinate and facilitate the process of obtaining the Elected Green Status, including identifying Green Measures, alternatives and providing such other services, advice and guidance as provided in this Addendum. The GBF is not, however, assuming the role or responsibilities of the Design Professional, who shall retain responsibility for the design of the Project



and other services to be performed by Design Professional, including selection and specification of materials and the preparation of the Plans and Specifications.

4.6. GBF shall perform the obligations of the GBF hereunder as well as those, if any, stated in the Governing Contract between Owner and GBF.

4.7. The responsibilities and obligations of the GBF include prompt submission and processing of all Green Certification Documents and other documentation, requests and information reasonably necessary to obtain an appropriate written certification, designation or denomination from a designated body or organization that the Elected Green Status has been obtained. GBF shall promptly prepare, provide, collect and submit all documents or other information or materials as reasonably needed to obtain written confirmation from such a designated body or organization that the Elected Green Status has been attained, which shall include collecting and submitting those documents and other materials that are to be provided by Design Professional or Contractor in accordance with Article 6 of this Addendum. In the event that such a designated body or organization determines that it will not issue the written confirmation, GBF shall promptly prepare, submit and process all additional documentation, requests or other information necessary to appeal or seek reconsideration of that determination.

5. GREEN STATUS

5.1. GBF shall provide advice and guidance to Owner regarding the alternatives for Green Status that Owner may consider. GBF shall assist Owner in determining which Green Status, if any, Owner may elect to pursue. Such advice, guidance and assistance shall include providing general information as to the cost and time implications of the Green Measures that would be required for the various Green Status alternatives. Such information as to cost and time implications is intended to be general in nature so as to assist in determining an overall course of action and is not intended as a cost or schedule guarantee, as more detailed or specific cost and schedule information will require the input of other Project Participants.

5.2. Upon Owner's determination of the Green Status that Owner elects to seek, such election shall be confirmed in writing by Owner to GBF, Design Professional and Contractor (if Contractor is not then a Project Participant, such confirmation will be provided to the Contractor when the Contractor is engaged or promptly thereafter), and shall be referred to herein as the Elected Green Status.

6. GREEN MEASURES

6.1. Within 30 days, or such other period of time as GBF and Owner may agree, following the written confirmation of the Elected Green Status in accordance with Section 5.2, GBF shall prepare a report outlining the combinations of Green Measures needed to attain the Elected Green Status. Such report shall separately identify and present the Physical Green Measures and the Procedural Green Measures in separate and distinct sections of the report. The section of the report presenting the Procedural Green Measures shall specifically identify the Project Participant that is proposed by GBF to perform each Procedural Green Measure. The GBF may identify in the Procedural Green Measures specific payments that are to be made upon or following implementation, performance or satisfaction of a designated requirement(s) included within the Procedural Green Measures, such as provision of specified documentation by the designated Project Participant. If Design Professional is the GBF, Design Professional shall ensure that all reports to be prepared by the GBF under this article are acceptable from the standpoint of the Design Professional before issuance of such reports.

6.2. The GBF shall meet with Owner and such other Project Participants then engaged by Owner as may be reasonably required to assist Owner in determining which combination of Green Measures identified in the report prepared by the GBF are acceptable to the Owner and result in attaining the Elected Green Status.



6.3. Based on the meetings and discussions with Owner, the GBF shall revise the reports provided in accordance with Section 6.1 in a manner consistent with Owner's determination and shall submit such revised reports to Owner for approval. The revised reports shall present the Green Measures, including Physical Green Measures and the Procedural Green Measures, with detail and specificity regarding how such Green Measures are to be implemented, performed or satisfied and by which Project Participant(s), to attain the Elected Green Status.

6.4. The GBF shall continue to advise Owner, confer with Owner and such other Project Participants and prepare further revisions to the reports prepared pursuant to this article as needed to receive Owner's written approval pursuant to Section 6.5.

6.5. When acceptable revised reports are provided to Owner in accordance with Sections 6.3 and 6.4, Owner shall provide written approval of such reports and together the approved reports (with subsequent revisions in accordance with this article) shall be referred to herein as the Elected Green Measures. The Physical Green Measures and the Procedural Green Measures as included in these approved reports (with subsequent revisions in accordance with this article) shall be referred to herein as Elected Physical Green Measures and Elected Procedural Green Measures respectively. The Elected Procedural Green Measures shall specifically identify the Project Participant(s) that is to implement, perform or satisfy each Elected Procedural Green Measure.

6.6. GBF shall provide to Design Professional (if the Design Professional is not the GBF) and Contractor (if then a Project Participant) the Elected Green Measures promptly following approval by Owner in accordance with Section 6.5. Contractor (if then a Project Participant) shall, within 30 days, or such other period of time as Contractor and Owner may agree, following receipt of the Elected Green Measures, conduct a general review of the Elected Green Measures and report to Owner, GBF and Design Professional any basis for concern so identified by Contractor.

6.7. Design Professional shall promptly incorporate in the Plans and Specifications the Elected Green Measures that are to be performed, implemented or satisfied by the Contractor, provided, however, Design Professional (if Design Professional is not the GBF) shall not be required to incorporate any Elected Green Measures to which Design Professional may reasonably object as being inconsistent with Design Professional's professional responsibilities or judgment. Objections by Design Professional, if any, shall be raised and addressed as provided in this article. Absent objection by the Design Professional in accordance with Section 6.8, Elected Physical Green Measures shall be included in that portion of the Plans and Specifications applicable to the relevant Work. Elected Procedural Green Measures that are to be performed, implemented or satisfied by the Contractor shall be set forth in a separate and distinct section of the Plans and Specifications by the Design Professional so that Contractor may readily identify such Elected Procedural Green Measures.

6.8. In the event that the GBF is not the Design Professional, should Design Professional identify any reason to object to any Elected Green Measure, or should Design Professional object to an Elected Green Measure, including an objection based on Design Professional's lack of familiarity or experience with an Elected Green Measure, Design Professional shall promptly provide notice of such objection to GBF and Owner in writing, which notice shall present the basis of the proposed objection and the alternative approach proposed by Design Professional. In the event that the GBF is not the Design Professional, Design Professional and GBF shall confer in an effort to resolve and address the objection to Design Professional and Owner's satisfaction.

6.9. Should an objection raised in accordance with Section 6.8 be resolved in a manner that differs from the Elected Green Measures, the reports prepared in accordance with Sections 6.2 through 6.4, including the Elected Physical Green Measures and Elected Procedural Green Measures as applicable, shall be revised by GBF as necessary to attain the Elected Green Status consistent with the grounds specifically stated for the objection(s). Such revised reports shall be promptly submitted



to Owner for approval and distributed by GBF to Design Professional and Contractor (if then a Project Participant) after approval by Owner.

6.10. In the event that Design Professional and GBF do not resolve an objection within 10 days following Design Professional's notice to GBF and Owner pursuant to Section 6.8, Design Professional shall so advise Owner and GBF. Design Professional, Owner and GBF will then confer as to such additional information or guidance that Design Professional may view as necessary or appropriate to resolve the objection in the manner proposed by GBF (for example, testing, test results or construction of a mock up). Owner, in its sole discretion, shall have the option of electing to provide such information or guidance at Owner's expense or to direct GBF to modify the Elected Green Measures so as to resolve Design Professional's objection. Owner shall promptly identify in writing the option that it has selected and the Project Participants shall proceed accordingly. Should the objection be resolved in a manner that differs from the Elected Green Measures, the GBF shall promptly revise the report previously prepared by the GBF accordingly.

7. PLANS AND SPECIFICATIONS

7.1. GBF shall periodically review the Plans and Specifications as they are being developed by the Design Professional and shall consult with and provide written advice and guidance to Design Professional (if Design Professional is not the GBF) and Owner regarding the incorporation of the Elected Green Measures into the Plans and Specifications.

7.2. Plans and Specifications that include the Elected Green Measures shall be prepared in accordance with the following procedure:

7.2.1. In the event that the GBF is not the Design Professional, upon completion of the Plans and Specifications by the Design Professional, which shall include all Elected Green Measures, Design Professional shall provide a copy of such Plans and Specifications to GBF for review.

7.2.2. Within 21 days following GBF's receipt of the Plans and Specifications, or such other time period agreed to by GBF and Owner, GBF shall review the Plans and Specifications and confirm in writing that the Elected Green Measures have been incorporated in the Plans and Specifications. GBF's written confirmation that the Elected Green Measures have been incorporated in the Plans and Specifications is intended only to verify that each of the Elected Green Measures has been included in the Plans and Specifications in a manner sufficient to achieve the Elected Green Status if followed. GBF's written confirmation shall not render GBF liable or responsible for the adequacy, accuracy or completeness of the Design Professional's design for any purpose other than achieving the Elected Green Status. Upon receipt of such written confirmation, Design Professional shall issue the Plans and Specifications to Owner and Contractor (if then a Project Participant).

7.2.3. If the Plans and Specifications are to be prepared by Design Professional in more than one phase, the number of phases by which the Plans and Specifications will be prepared and issued is set forth in this Subsection 7.2.3. GBF's review of the Plans and Specification shall be performed for each phase. The number of phases is acknowledged by the parties to be [] (insert number of phases if more than one).

7.2.4. In the event that GBF, in the course of conducting its review(s) as required by this Section 7.2, determines that any of the Elected Green Measures have not been sufficiently incorporated in the Plans and Specifications as needed to attain the Elected Green Status, GBF shall promptly report to Owner and Design Professional in writing proposed modifications to be made by Design Professional to the Plans and Specifications so that the Elected Green Status will be attained. Design Professional shall revise the Plans and Specifications consistent with such proposed modification(s) promptly following receipt of such report. The revised Plans and Specifications



shall thereafter be provided by Design Professional to GBF. Any objection(s) that Owner or Design Professional may have to such proposed modification(s) shall be promptly presented in writing to Owner, Design Professional and GBF. Owner, Design Professional and GBF shall thereafter address such objection(s) following the same procedure as set forth in Sections 6.8 through 6.10 as applicable. GBF shall promptly review the revised Plans and Specifications and issue the written confirmation required by Subsection 7.2.2 reflecting that the revised Plans and Specifications are consistent with proposed modifications and/or the resolution of any such objection(s). After receipt of such written confirmation, Design Professional shall issue the Plans and Specification to Owner and Contractor (if then a Project Participant).

7.2.5. In the event that the Design Professional is the GBF, the written confirmation to be made by GBF that the Elected Green Measures have been incorporated in the Plans and Specifications, as required by this Section 7.2, shall be deemed to have been made by issuance of the Plans and Specifications by Design Professional.

7.3. If Contractor is then a Project Participant, within 30 days (or such other period of time period as Owner and Contractor may agree) of Contractor's receipt of the Plans and Specifications issued by Design Professional and confirmed or deemed to be confirmed by the GBF in accordance with Section 7.2, Contractor shall provide a written statement to Owner, Design Professional and GBF of objections, if any, that Contractor may have or additional information that Contractor may deem necessary to address any causes of concern identified by Contractor with respect to the Elected Procedural Green Measures or constructability of the Elected Physical Green Measures. If Contractor is the GBF, Contractor shall present such a written statement at the same time and in the same manner as proposed modifications are to be reported by GBF as required by Section 7.2.4.

7.4. Should Contractor raise any objection(s) or request(s) for additional information pursuant to Section 7.3, the GBF shall coordinate the effort to provide information and resolve any objection(s) or request(s) related to Green Measures. The Design Professional shall issue to the Owner, Contractor and GBF revisions to the Plans and Specifications consistent with the manner in which the objection(s) or request(s) have been resolved. Contractor shall not be deemed to have assumed the responsibilities of Design Professional or GBF, nor shall Contractor be liable or responsible for any defects or deficiencies in the Plans and Specifications as a consequence of the Contractor's failure to identify any such defect or deficiency, provided that the foregoing shall not apply to the assumption of the responsibilities or liabilities of GBF in the event that Contractor is serving as the GBF.

7.5. The Plans and Specifications issued by the Design Professional at the conclusion of the process required by Sections 7.2 through 7.4 shall be incorporated as applicable in the Governing Contract for the Contractor.

7.6. Should the Plans and Specifications issued by the Design Professional at the conclusion of the process set forth in Sections 7.2 through 7.4, as applicable, impose obligations or responsibilities that differ from those previously assumed by any of the Project Participants in their respective Governing Contracts, including any change in the Plans and Specifications, delay or additional Work or other obligations, a Change Order or other comparable document shall be prepared and submitted as provided in the applicable Governing Contract and signed by Owner adjusting the respective Governing Contract so affected to provide appropriate adjustments to price, payments and time.

7.7. Upon incorporation of the Elected Green Measures in the Plans and Specifications as described by Section 7.5 and adjustment to an applicable Governing Contract, if applicable as described by Section 7.6, each Project Participant shall be required to perform and provide those Elected Green Measures specifically identified as the responsibility of that Project Participant in such Plans and Specifications. The incorporation of Elected Green Measures in the Plans and Specifications shall not expand or diminish other responsibilities of any Project Participant as provided in a Governing



Contract, except to the extent specifically set forth in the Governing Contract, Change Order or other comparable document issued in accordance with Section 7.6.

7.8. Neither Design Professional or Contractor shall be required to perform or provide any of the Elected Green Measures that are not identified as the responsibility of that Project Participant in the Plans and Specifications incorporated in and required by its respective Governing Contract, which may include incorporation by Change Order or other comparable document executed by the parties to a Governing Contract. Contractor shall only be required to perform or provide those Elected Procedural Green Measures specifically stated as the responsibility of the Contractor in the Plans and Specifications incorporated in the Contractor's Governing Contract, which may include incorporation by Change Order or other comparable document as provided in the applicable Governing Contract.

7.9. Should, during the course of the Project, modifications to the Plans and Specifications arise or be proposed, such modifications shall be addressed as follows:

7.9.1. Design Professional shall promptly review such modifications and identify those instances in which such a modification may affect the Elected Green Measures.

7.9.2. Design Professional shall notify Owner, GBF and Contractor within 7 days following Design Professional's discovery that such a modification may affect the Elected Green Measures.

7.9.3. GBF shall review such modification and advise Owner as to the effect of the modification upon the ability to achieve the Elected Green Status within 10 days (or such other period of time as Owner and GBF may agree).

7.9.4. Should Owner request, Design Professional, Contractor, GBF and Owner shall confer as to alternatives and other considerations relative to the effect of such modification on the Elected Green Measures.

7.9.5. Following issuance by Design Professional of a written notification by Design Professional pursuant to this Section 7.9, Design Professional shall prepare and issue modifications to the Plans and Specification to reflect the modification after either a) GBF has issued written notification that the modification will not affect attaining the Elected Green Status, or b) Owner directs Design Professional to proceed.

7.9.6. Contractor shall not be required to proceed with the modification until the Design Professional has addressed the modification and any appropriate Change Order or other comparable document related to the modification has been issued in accordance with the Governing Contract between Owner and Contractor.

7.9.7. Should Contractor request a substitution in accordance with applicable terms of its Governing Contract, Contractor shall submit the substitution proposal to Design Professional and GBF (if Contractor is not the GBF). GBF shall review such proposed substitution and advise in writing as to any adverse effects that the proposal would have on attaining the Elected Green Status. If Contractor is the GBF, Contractor shall provide such advice promptly following submission of the substitution proposal. GBF shall not approve a proposed substitution that would result in such adverse effects without Owner's written consent.

8. RISK ALLOCATION

8.1. Articles 4 through 7 of this Addendum recognize that the Contractor may not be engaged by Owner as early in the process as the Design Professional and GBF. After such time as Contractor has been engaged, Contractor shall confer with Owner, Design Professional and GBF regarding matters being addressed by and between Owner, Design Professional or GBF in accordance with



Articles 5 through 7 of this Addendum. Contractor's participation in addressing such matters shall not render Contractor responsible for the performance of any services required by any other Project Participant, Green Measures, Green Status or the Plans and Specifications.

8.2. Liability of the Project Participants under this Addendum, including but not limited to the GBF, Design Professional and Contractor, shall be subject to any limitation or specific assumption of liability in their respective Governing Contract. Owner's loss of income or profit or inability to realize potential reductions in operating, maintenance or other related costs, tax or other similar benefits or credits, marketing opportunities and other similar opportunities or benefits, resulting from a failure to attain the Elected Green Status or intended benefits to the environment, shall be deemed consequential damages subject to any applicable waiver of consequential damages in a Governing Contract unless specifically excluded from such a waiver in the Governing Contract. Liability and limits of the liability of GBF, Design Professional and Contractor, if and to the extent applicable, shall be as set forth in the Governing Contract between Owner and GBF, and are neither expanded nor diminished by this Addendum.

8.3. Unless otherwise expressly provided in a Governing Contract, no Project Participant other than GBF shall be liable or responsible for the failure of the Elected Green Measures to achieve the Elected Green Status or intended benefits to the environment or natural resources. This Section 8.3 does not relieve any Project Participant from any obligation to perform or provide Elected Green Measures as required by its Governing Contract.

8.4. Nothing herein is intended to expand or diminish Design Professional's liability or responsibility for any defect or deficiency in the Plans and Specifications or failure of the Plans and Specifications to comply with applicable laws, codes, ordinances and regulations, except to the extent Design Professional has assumed liability or responsibility of the GBF in the event Design Professional serving as the GBF.

8.5. Except to the extent applicable to the Design Professional or Contractor having assumed the role of the GBF as provided in this Addendum, nothing herein is intended to impose upon Contractor or Design Professional any liability or responsibility if the Elected Green Measures do not achieve the Elected Green Status, provided however that the foregoing is not intended to relieve Design Professional of liability or responsibility for any defect or deficiency in any of the Elected Green Measures incorporated into the Plans and Specifications.

8.6. Nothing herein is intended to impose upon Design Professional or GBF liability or responsibility for the Contractor's means or methods of performing the Work, except for any means or methods included in the Elected Green Measures and incorporated into the Plans and Specifications.

8.7. This article shall be applicable notwithstanding anything contained in this Addendum to the contrary.

