



Memorandum of Understanding U.S. Green Building Council & the International Code Council

PARTIES: This Memorandum of Understanding (MOU) is entered into by and between the International Code Council, Inc. (Code Council) and the U.S. Green Building Council, Inc. (USGBC).

PURPOSE: The purpose of this MOU is to describe the activities and arrangements between the parties that will help to build a stronger relationship between USGBC and the CODE COUNCIL.

SCOPE: This MOU is undertaken by mutual consent of the parties. In entering into this MOU, both organizations are committing to identify cooperatively areas of mutual interest and work together on industry advocacy and public policy matters which both organizations support. Both parties are also committing to explore and implement joint business opportunities that benefit both organizations.

4.0 STIPULATIONS: The parties to this MOU acknowledge and agree to the following stipulations with regard to their respective roles:

4.1 CODE COUNCIL MEMBERSHIP: The USGBC acknowledges the unique membership characteristics of the CODE COUNCIL and recognizes its authority to exercise sole and exclusive discretion in all decisions concerning matters related to the direction, administration and operation of the CODE COUNCIL. The USGBC acknowledges the CODE COUNCIL's copyright in publications and understands that neither USGBC nor its members who may engage in activities as a result of this MOU accrue any interest or property rights, including rights in copyright, to publications or products which they participate in developing.

4.2 USGBC MEMBERSHIP: The CODE COUNCIL acknowledges the unique membership characteristics of USGBC in representing a broad section of the building industry united by a common purpose: to transform the building marketplace to sustainability and recognizes its authority to exercise its sole and exclusive discretion in all decisions concerning matters related to the direction, administration and operation of USGBC. The CODE COUNCIL acknowledges USGBC's copyright in publications and understands that neither the CODE COUNCIL nor its members who may engage in activities as a result of this MOU accrue any interest or property rights, including rights in copyright, to publications or products which they participate in developing.

4.3 CODE COUNCIL ROLE: The USGBC acknowledges the CODE COUNCIL's important role in the area of safety for the built environment and recognizes the CODE COUNCIL's vision and mission to protect the health, safety, and welfare of people by creating better buildings and safer communities, which is accomplished by providing the highest quality codes, standards, products, and

services for all concerned with the safety and performance of the built environment.

4.4 USGBC ROLE: The CODE COUNCIL acknowledges the USGBC prominent role as the nation's foremost coalition of leaders from every sector of the building industry working to promote buildings that are environmentally responsible, profitable and healthy places to live and work and recognizes USGBC's to transform the building marketplace to sustainability by bringing together leaders from every sector of the building industry.

5. WORK COOPERATIVELY IN AREAS OF MUTUAL INTEREST: The parties agree to work to identify areas of mutual interest. Once these areas are identified, the parties further agree to work cooperatively in these areas in order to leverage their impact, increase reach, and maximize efficient use of each organization's resources.

The parties agree to work together on education matters that are of benefit to both organizations. This activity will include development of a green building education track as part of the education program at each ICC Annual Conference.

6. WORK TOGETHER ON ADVOCACY & PUBLIC POLICY MATTERS: The parties agree to work together on advocacy and public policy matters which both organizations support. This activity will include an annual review of the respective advocacy priorities for both organizations to identify areas of mutual interest. It will also include routine contact at the staff level. The USGBC is a 501(c) (3) not-for-profit corporation and the CODE COUNCIL agrees that it will not include the USGBC's name in advocacy and public policy matters without specific written permission from the USGBC. The CODE COUNCIL is a 501(c) (6) not-for-profit corporation and the USGBC agrees that it will not include the CODE COUNCIL's name in advocacy and public policy matters without specific written permission from the CODE COUNCIL.

7. EXPLORE AND IMPLEMENT JOINT BUSINESS OPPORTUNITIES: The parties agree to explore and implement joint business opportunities that could benefit both organizations. These opportunities may include, but are not limited to, joint publication development, reseller agreements, joint training activities, certification programs and cross marketing. One specific initial activity is outlined in Attachments A of this MOU. Another activity that the parties agree to explore is joint certification programs for inspection personnel. The USGBC and the CODE COUNCIL both have prestigious credentialing programs for building inspection personnel. Many building departments and state agencies that regulate code enforcement personnel recognize the CODE COUNCIL's certification. The USGBC LEED accreditation, which is awarded to building industry practitioners who successfully demonstrate these proficiencies on a comprehensive exam, is also widely recognized by many state agencies. The Parties agree to explore the joint development of "code compliance packages" consisting of compiled information on specific alternative materials, methods or designs which present ongoing code approval problems in plan review or inspection.

- 8. STAFF SUPPORT FOR ACTIVITIES:** Both parties agree to provide the necessary number of qualified and competent staff required to support the activities described in this MOU.
- 9. TRAVEL EXPENSE REIMBURSEMENT:** The parties agree that each organization will be responsible for its own travel expenses that may be incurred as a result of this MOU.
- 10. PREVIOUS AGREEMENTS:** This agreement supercedes and replaces all previous agreements, contracts, and arrangements between the parties. All such previous agreements, contracts, and arrangements between the parties are hereby rescinded.
- 11. TERM:** This MOU shall take effect immediately upon ratification by both the USGBC Board of Directors and the CODE COUNCIL Board of Directors.
- 12. TERMINATION:** This agreement may be terminated by either party by submitting written notice to the other party not less than 60 days prior to the intended date for suspending activities within the scope of this MOU. Such notice shall indicate the reasons for requesting such termination.
- 13. CODE COUNCIL HOLD HARMLESS:** The CODE COUNCIL agrees to fully indemnify and hold harmless the USGBC, its officers, directors, agents, employees, attorneys, representatives, successors, and assigns, individually or collectively, from any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, directly or indirectly arising out of, resulting from, or relating to the CODE COUNCIL's activities under this MOU, including any acts or omissions of the CODE COUNCIL, any agent, officer, director, representative, employee, consultant, or subcontractor of the CODE COUNCIL, and their respective officers, agents, employees, directors, and representatives in the exercise or performance of the rights and duties contained herein. The CODE COUNCIL shall promptly advise the USGBC in writing of any claim or demand against the USGBC or the CODE COUNCIL known to be CODE COUNCIL-related to or arising out of CODE COUNCIL activities under this MOU and shall see to the investigation and defense of such claim or demand at the CODE COUNCIL's cost.
- 14. USGBC HOLD HARMLESS:** The USGBC agrees to fully indemnify and hold harmless the CODE COUNCIL, its officers, directors, agents, employees, attorneys, representatives, successors, and assigns, individually or collectively, from any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, directly or indirectly arising out of, resulting from, or relating to the USGBC's activities under this MOU, including any acts or omissions of the USGBC, any agent, officer, director, representative, employee, consultant, or subcontractor of the USGBC, and their respective officers, agents, employees, directors, and representatives in the exercise or performance of the rights and duties contained herein. The USGBC shall promptly advise the CODE COUNCIL in writing of any claim or demand against the CODE COUNCIL or USGBC known to be USGBC-related to or arising out

of USGBC activities under this MOU and shall see to the investigation and defense of such claim or demand at the USGBC's cost.

INTERNATIONAL CODE COUNCIL, INC. (ICC)

_____	May 9, 2007
Wally Bailey, President	Date

U.S. Green Building Council (USGBC)

_____	May 9, 2007
David Eisenberg, Greening the Codes Committee Chair	Date

Attachment "A"

Co-Publishing Agreement

This Agreement, made this 9 day of May, 2007, between the U.S. Green Building Council (hereafter referred to as "USGBC"), a Washington DC nonprofit corporation with its principal office located at 1800, Massachusetts Avenue, NW, Suite 300, Washington, DC 20036, and International Code Council, an association, whose principal address is 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001 (hereinafter referred to as "ICC") ("USGBC" and "ICC" are collectively referred to herein as the "Co-Publishers").

WHEREAS, USGBC is the nation's foremost coalition of leaders from every sector of the building industry working to promote buildings that are environmentally responsible, profitable and healthy places to live and work.

WHEREAS, ICC is dedicated to building safety and fire prevention through providing the highest quality codes, standards, products, and services for all concerned with the safety and performance of the built environment

NOW THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by USGBC and ICC, the Co-Publishers agree as follows:

1. Co-Published Work.

- (a) USGBC and ICC agree to co-author and co-publish an introductory work on the subject of building codes and sustainability. The Work will be published as a book in print and/or electronic format in accordance with the terms and conditions of this Agreement.
- (b) Within thirty (60) days after the execution of this Agreement, the Co-Publishers will prepare and agree upon an outline or content summary for the Work, such that the subject matter is thoroughly covered. The Co-Publishers will agree upon and allocate their respective responsibilities for authorship and expert review of various portions of the Work. The Co-Publishers will carry out their respective authorship and expert review responsibilities according to a mutually agreed upon delivery schedule.
- (c) The Co-Publishers shall mutually agree on the content, format, page layout, cover design, and credit and attribution text for the Work. The Co-Publishers agree that when a party with responsibility for a particular portion of the Work requests review and approval by the other party, such request shall be

accompanied by a realistic deadline. If the other party does not respond in a timely manner, or does not request more time within ten (10) business days of the initial request, the responding party's approval shall be presumed, and the requesting party shall proceed.

- (d) ICC shall serve as project manager (the "Project Manager"), provide manuscript editing, procure typesetting and design services, and obtain printing estimates. ICC shall provide complete cover design and printer-ready cover file.
- (e) The Co-Publishers shall mutually determine when resources or services outside of USGBC and ICC, such as writers, editors, proofreaders, artists, designers, and typographical services, are needed for the proper development and revision of the Work. They shall mutually agree on a budget for such resources or services and shall authorize the Project Manager to hire such resources or services on an as-needed basis. The fees and expenses for such outside resources or services will be shared as detailed in Section 3. The Project Manager will obtain all necessary assignments of rights from such outside resources or services to ensure that Co-Publishers will own all rights necessary for publication of the Work.
- (f) Each Co-Publisher shall procure at its own expense any written permissions necessary to use the content it contributes to the Work and shall deliver such permissions to the Project Manager, on or before the applicable due date. If the Project Manager is required to obtain such permissions because the responsible Co-Publisher fails to do so, it may charge the Co-Publisher for the reasonable costs thereof.
- (g) Upon request from the Project Manager, each Co-Publisher will specify the number of copies it desires printed for its use and distribution from the first combined printing run. The Project Manager shall then work with the printing company to produce an initial printing sufficient to meet the requests of each Co-Publisher.
- (h) The Project Manager shall request the printer to produce duplicate print-ready files of the Work on completion of the first combined printing run of the Work, and to deliver a print-ready file to each Co-Publisher.
- (i) The Work shall be published as soon as reasonably possible, time being of the essence, but no later than December 2007; *provided, however*, that this publication deadline may be extended for a reasonable time upon the mutual agreement of the Co-Publishers.
- (j) Each Co-Publisher shall be responsible for and assume the risk of the marketing, sale and distribution of all copies of the Work that it has requested from the printer in the first combined printing run, and in all subsequent printings, whether combined or separate.

2. Copyright.

- (a) The Co-Publishers intend that the Work shall be a “joint work” as that term is defined in Section 101 of the Copyright Act. USGBC and ICC shall jointly own the copyrights in the Work, and the copyright notices and registrations for the Work shall be in the names of both Co-Publishers, which shall equally bear all expenses necessary for registering the copyright and recording its assignment. The Project Manager shall register the copyright.
- (b) Notwithstanding the foregoing, each Co-Publisher shall be entitled to retain one hundred percent (100%) of the revenues generated by the marketing, sale and distribution of its respective share of any combined printing of the Work, or of any separate printing of the Work, and the other Co-Publisher shall have no right, title, or claim in or to any such revenues.
- (c) Each party shall be entitled to utilize any portion of the Work, including as part of a larger work or compilation, without incurring copyright fee to the other party.
- (d) Any licensing of material from the Work requires the permission of both parties. If either party receives a request to license any part of the Work, it will notify the other party, which will promptly inform the first party whether it will grant or refuse permission.

3. Expenses.

- (a) The Co-Publishers shall equally share all expenses, to be disclosed and agreed to in advance, of outside resources and services described in Section 1(e) above.
- (b) The Co-Publishers shall bear the expenses of the printing, binding, and shipping of books equal to their respective share of the final printed quantity and final destinations.
- (c) The Co-Publishers agree that after the first combined printing run, combining reprint runs is desirable, and they agree to reprint the Work once inventory of both parties is depleted. The Co-Publishers agree to buy inventory from each other at unit cost plus shipping and handling expenses in quantities no smaller than 25 units. When the Co-Publishers elect to combine print runs, each Co-Publisher is responsible for its proportionate share of associated expenses, including shipping costs. However, the Co-Publishers reserve the right to undertake separate printings of the Work based on respective needs of the Co-Publishers.
- (d) Each party shall bear its own expenses in connection with the marketing, sale and distribution of the Work.

4. Product Pricing. USGBC and ICC will agree in writing on an initial common pricing structure for the Work and agree to review in good faith all proposed revisions to pricing of the Work in all forms. No changes to a previously agreed pricing structure may be made without specifically being accepted in writing by both USGBC and ICC.

5. Revised Editions. The Co-Publishers agree to periodically review the Work for any updates necessitated by the advances in codes or changes in the positions of USGBC

and ICC concerning jobsite codes, and to make such revisions as necessary. The Co-Publishers shall review all proposed revisions to content or design and layout of the Work. No changes may be made without specifically being accepted in writing by both Co-Publishers.

6. Cessation of Printing. When market conditions or changes so dictate, the Co-Publishers may agree in writing to discontinue printing the Work. In such event, either party shall have the option to acquire the other party's copyrights in the Work for fair market value, as determined by an independent third party appraiser.

7. Servicemarks.

- (a) USGBC's name and logo (USGBC Servicemarks) and ICC name and logo (ICC Servicemarks) (collectively, the "Servicemarks") will appear on the cover and copyright page of the Work.
- (b) Each party acknowledges the other party's ownership of its respective Servicemarks. No title to or ownership of the Servicemarks, or any part thereof, is hereby transferred by one party to any other party. Each party agrees that all uses of the Servicemarks shall inure to the benefit of the respective owners and that no party shall acquire any rights, interest, or good will in the Servicemarks of another party.
- (c) Each party, respectively, hereby grants the other party a limited, nonexclusive, non-transferable license to display Servicemarks on the Work. The term of this license is the period beginning upon the effective date of this Agreement and ending upon its termination.
- (d) Upon termination of the license, each party shall cease any and all use of the other party's Servicemarks. However, copies of the Work that have already been printed may continue to be distributed until the supply in each party's possession is exhausted. The license shall terminate on the earlier of 1) expiration of the license period; 2) an earlier termination of the license by mutual written agreement of the parties; 3) termination of this Agreement; or 4) breach by any party of any of the terms of this Agreement.
- (e) Any and all uses of the parties' Servicemarks must conform to their respective Graphic Standards and any other requirement established by the owner and must be reviewed and approved by the owner in writing prior to use.

8. Nonexclusivity. This Agreement shall not be construed to limit USGBC or ICC in their ability to enter into or carry out similar agreements or projects with other parties or on their own.

9. Warranties. USGBC and ICC each warrants to the other that it is the sole owner of original content contributed by it to the Work (the "Contribution") and of all the rights being granted in this Agreement; that USGBC and ICC have full right and power to make the assignment in this Agreement; that the Contribution does not violate any copyright, proprietary, or personal rights of others; that the Contribution shall contain no material from other copyrighted works without the written permission of the owner of such copyrighted material; that the Contribution is factually accurate and contains no

scandalous, libelous, unlawful, or otherwise actionable material; that neither USGBC nor ICC has previously in any manner assigned or transferred any of the rights hereby granted to each other or previously granted any rights adverse or inconsistent with such grant of rights; and that there are no rights outstanding that would diminish, encumber, or impair the full enjoyment or exercise of the rights granted to the Co-Publishers under this Agreement.

10. Indemnification.

- (a) Each party shall indemnify and hold harmless the other from and against any and all losses, liabilities, costs, actions, claims, and other obligations and proceedings, including reasonable attorneys fees incurred in connection therewith, which may arise or result from the inaccuracy or breach of any of the indemnifying party's warranties made herein or from the failure to obtain any necessary permissions from the owners of any copyrighted material to be included in the Work. This subparagraph shall survive termination of the Agreement.
- (b) Each party agrees to indemnify and hold harmless the other from damage or injury due to each party's sales and marketing efforts.

11. Termination.

This Agreement shall terminate (1) upon mutual agreement of USGBC and ICC to discontinue publication of the Work, or (2) if either USGBC or ICC materially breaches any term or condition of this Agreement and fails to cure such breach within ten (10) business days after receipt of written notice of such default by the nondefaulting party.

12. Assignment.

Neither Party may assign any right granted or obligation assumed hereunder without the prior written consent of the other Party. Any other such attempted transfer without prior written consent shall be null, void and of no force or effect.

13. Relationship of Parties. The parties acknowledge and agree that each is an independent business entity, they are not joint venturers, and as such, no party may represent itself as an employee, agent, or representative of any other; nor may it incur any obligations on behalf of any other party that are not specifically authorized in this agreement.

14. Miscellaneous Provisions.

- (a) This Agreement may not be assigned by any party without the prior written consent of the other parties.
- (b) Nothing in this Agreement, whether express or implied, is intended to confer upon any person, other than the parties identified herein, any rights or remedies under, or by reason of, this Agreement.

- (c) No amendment of this Agreement shall be binding or enforceable on any party hereto unless in writing signed by all parties.
- (d) Any failure or delay by either party in exercising any right to remedy will not constitute a waiver. The waiver of any default will not waive a subsequent default of the same of different type.
- (e) Either party may terminate this Agreement without liability due to acts of God, acts, regulations, or orders of governmental authorities, war, acts of terrorism or other violence, civil disorder, disaster or other emergency (including but not limited to fire, flood, severe weather, and earthquake), strikes, lockouts or work stoppages, a bankruptcy filing by either party, or any other situation making the party's performance illegal, impossible, or otherwise inadvisable.
- (f) This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the District of Columbia (excluding the District of Columbia's conflict of laws rules that would refer to and apply the substantive laws of another jurisdiction). The parties hereby agree to submit themselves to the personal jurisdiction of the courts of the District of Columbia, which shall be the exclusive venue for any disputes relating to this Agreement, and waive any jurisdictional or venue defense otherwise available.
- (g) All notices and other communications required by this Agreement shall be in writing and shall be delivered by certified or registered mail, return receipt requested. All notices and other written communications under this Agreement shall be addressed as indicated below, or as specified by subsequent written notice delivered by the party whose address has changed. The parties agree to notify each other of any change of address within thirty (30) days of the effective date of such change

If to USGBC: U.S. Green Building Council
 1800 Massachusetts Avenue, N.W.
 Washington, D.C. 20036
 Attention:

If to ICC: International Code Council, Inc.
 500 New Jersey Avenue, NW, 6th Floor,
 Washington, DC 20001
 Attention: Mark Johnson

IN WITNESS WHEREOF, ICC has signed below to indicate their acceptance of the terms and conditions of this Agreement and USGBC has caused this Agreement to be executed by a duly authorized officer.

INTERNATIONAL CODE COUNCIL, INC. (ICC)

May 9, 2007

Richard P. Weiland, CEO

Date

U.S. Green Building Council (USGBC)

May 9, 2007

Joe Maheady, Director, Public Policy

Date