

**STATE BUILDING STANDARDS CODE AGREEMENT
BETWEEN**

**CALIFORNIA BUILDING STANDARDS COMMISSION
AND**

THE INTERNATIONAL CODE COUNCIL

(2008 California Green Building Standards Code, CCR, Title 24, Part 11)

This Agreement is made this _____ day of _____ 2009, by and between the International Code Council (hereinafter referred to as "ICC") and the State of California Building Standards Commission (hereinafter referred to as "CBSC"), each of which is also referred to individually as "Party" and both of which are also referred to collectively as "Parties."

- A. **WHEREAS**, CBSC periodically adopts, approves and codifies building code standards and amendments pursuant to Section 18928.1 of the California Health and Safety Code; and
- B. **WHEREAS**, CBSC is the sole owner of the copyrights to the 2008 California Green Building Standards Code, CCR, Title 24, Part 11 ("Licensed Property"); and
- C. **WHEREAS**, CBSC desires to publish, on or before _____, 2009, the 2008 edition of the Licensed Property, as part of the 2007 State Building Code (SBC); and
- D. **WHEREAS**, ICC and CBSC desire to facilitate the publication of the 2008 edition of the Licensed Property in a pre-assembled softcover format; and
- E. **WHEREAS**, ICC and CBSC desire to make available necessary annual amendments from time to time to the 2008 edition of the Licensed Property, as well as supplements to the 2008 editions of the Licensed Property in response to emergency regulations (the 2008 editions of the Licensed Property, amendments thereto, supplements thereto in response to emergency regulations, and all related errata sheets, collectively referred to herein as "the Code").

NOW THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the Parties agree as follows:

1. Ownership.

- 1.1 The Code shall remain the property of the CBSC, and nothing contained in this Agreement shall be deemed to transfer any ownership of the Code to ICC.
- 1.2 The ownership rights defined in this paragraph 1 shall survive the termination of this Agreement.

2. Grant of License. CBSC grants to ICC an exclusive, royalty-free, perpetual, worldwide license to copy, print, publish, distribute, and sell the Code in any format, including print and electronic, in accordance with the terms of the Agreement. CBSC shall retain the right to create and distribute derivative or secondary works (such as handbooks, checklists, training materials and study guides) that incorporate Code text.

In the event ICC breaches its obligations provided in Paragraphs 2, 3, 4, 5 or 6, or terminates this Agreement pursuant to paragraph 10.1, or otherwise discontinues to publish or fails to make available for sale the Code, then CBSC may print and publish or authorize the printing of and publication of the Code for its own use and for sale to the public until publishing thereof is recommenced by ICC or until one hundred and eighty (180) days after the publication of the next edition of the Title 24 (viz., 2004 edition), whichever occurs first, without compensating ICC. If at any time prior to the discontinuation of publication by ICC, said Code, for any reason, becomes temporarily out of print or unavailable so that copies thereof cannot be furnished within thirty (30) days after they are requested for purchase by any person or entity, then the CBSC may print and publish, or authorize the printing of and publication of any of the unavailable documents for its own use and for sale to the public in quantities to meet immediate demand, until ICC recommences furnishing copies or until one hundred and eighty (180) days after the publication of the next edition of the Code, whichever occurs first, without compensating ICC.

3. Technical Services. Immediately after the execution of this Agreement, ICC shall commence the following services related to the development and publication of the Code:

- 3.1 ICC shall print, publish and make available for sale to the State, local governmental agencies, and to the general public, copies of the Code in a softcover format.
- 3.2 ICC shall also provide CBSC with 200 copies of the final text corresponding to the printed version of the Code, and two-hundred (200) copies of all 2008 supplements, supplements in response to emergency regulations, and all related errata sheets, in an electronic version in electronic format that allows editing of text solely for code development purposes.

4. Sale of Code. ICC agrees to furnish the Code in softcover format on the following basis:

- 4.1 ICC shall make the Code described in Paragraph 3.1 hereof available to the State, local governmental agencies, and the general public at a price established by ICC that will entitle the purchaser to receive all Supplements, supplements in response to emergency regulations, and all related errata sheets, from ICC at no additional charge in accordance with the provisions of Paragraph 6.
- 4.2 Any bookstore or other vendor may purchase the Code from ICC for resale and may resell the same at any price which will entitle the purchaser to receive all subsequent Supplements, supplements in response to emergency regulations, and all related errata sheets, from ICC at no additional charge in accordance with the provisions of Paragraph 6 hereof.
- 4.3 ICC shall deliver twenty-two (22) complimentary copies of the Code to CBSC and then deliver one complimentary copy for each new Commissioner appointed after the publication date of the code, in addition to the delivery of the original 22 copies until one hundred and eighty (180) days after the Publication of the next edition of Code. CBSC shall provide ICC with names and delivery addresses of the current and any new Commissioners as well as notifying ICC of any terminations.
- 4.4 ICC shall provide to CBSC the electronic files of the Code, along with any supplements and emergency updates, in order that the CBSC may make the Code available internally on the CBSC intranet or internal network for use solely by CBSC staff. If ICC develops an enhanced

CD with additional features, such as Boolean search capabilities, annotation feature, global search feature or hyperlinking capabilities, ICC shall also make such enhanced CD available to the CBSC for internal use as provided in this sub-paragraph.

5. State Code Distribution. The Library Distribution Act (LDA) establishes a system to distribute California State agency publications to libraries in order to make such publications widely available to residents of the State of California (Government Code Section 14900-14911). During the term of this Agreement ICC shall deliver complementary copies of the Licensed Properties and automatically, regardless of subscription requests, all Supplements directly to the Deposit Libraries listed in the California Library Directory and listed in Attachment B hereto in the quantities set forth therein, one (1) copy each to the Selective Depository Libraries listed in Attachment C hereto and copies each to the State agencies listed in Attachment D hereto in the quantities listed therein. ICC shall obtain and retain proof of delivery of all materials distributed in accordance with this provision and make them, or copies of them, available to the CBSC upon written request until one year after termination of the within Agreement or be willing to ship additional complementary copies upon written request.

6. Subscription Service. In order to ensure that the Code purchased from ICC or any bookstore or other vendor is accurate and up to date, beginning from the time of the initial publication, ICC or CBSC shall make available, all supplements, all supplements in response to emergency regulations, and all related errata sheets, on their website at no additional cost.

7. Compensation. In consideration of the opportunity provided to ICC by CBSC to make sales of the Code, no fees, royalties or other payments of any nature shall be required to be paid by CBSC to ICC with respect to this Agreement or the licenses granted hereunder.

8. Representations or Warranties of ICC. ICC represents and warrants that it has the necessary rights to enter into this Agreement.

9. Representations and Warranties of CBSC. CBSC represents and warrants that it has full authority to enter into this Agreement.

10. Term and Termination.

10.1 This Agreement shall be effective on the date of execution as first written above and shall continue thereafter unless terminated by either Party giving a thirty (30) day written notice of termination to the other Party or until one hundred and eighty (180) days after the publication of the next edition of the Code, whichever occurs first. The term of this Agreement may be extended by Amendment to this Agreement. This Agreement may be terminated at any time in the event of default by one Party by the non-defaulting Party giving written notice of default to the defaulting Party, and the failure of the defaulting party to cure the default within thirty (30) days of receipt of the written notice of default.

10.2 Upon termination of this Agreement, the parties shall discontinue further printing, publication, sales and distribution of the Code, except ICC shall be entitled to sell its then existing inventory of the Code.

11. Copyright Notices and Registrations. All reproductions and/or publications of the Code after the effective date of this Agreement shall, at the request of the CBSC, as specified in Attachment F.

12. Notices. All notices, requests and other communications hereunder shall be in writing and shall be delivered by personal service, by FAX or mailed first class, postage prepaid, by certified mail, return receipt requested, in all cases addressed to:

ICC: International Code Council
5360 Workman Mill Road
Whittier, CA 90601-2298
Attention: Mark Johnson

Fax No.: (562) 699-9721

CBSC: California Building Standards Commission
2525 Natomas Park Drive - Suite 130
Sacramento, California 95833-2936
Attention: E. David Walls, Executive Director

Fax No.: (916) 263-0959

In the case of service by mail, service shall be deemed complete at the earlier of (a) the expiration of the third (3rd) business day after the date of postmark, or (b) the date of delivery as shown by the return receipt. In the case of service by FAX, upon sending without a failure. In the case of service by FAX, a copy of the notice shall be sent by registered or certified mail, in the manner set forth above, within twenty-four (24) hours after being originally sent by FAX. In the case of personal service, upon obtaining a receipt of delivery, delivery shall be deemed complete on the date of actual delivery. Either party hereto may, from time to time, by notice in writing, served as set forth above, designate a different address to a different or additional person to which all such notices or communications thereafter are to be given.

13. Relationship of Parties. The relationship of ICC to CBSC hereunder shall be that of an independent contractor and CBSC shall have no right to supervise ICC, its officers, or employees in their performance hereunder. CBSC shall look to ICC for performance in conformity with the scope of this Agreement. However, ICC shall coordinate with CBSC Executive Director as to the services to be rendered hereunder.

14. Assignment. Neither party may assign any right granted or obligation assumed hereunder hereof 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 and shall constitute a breach of this Agreement.

15. Funding. ICC understands and agrees that under certain provisions of California law, CBSC may not obligate itself by contract to an extent in excess of an amount appropriated therefor by the State Legislature as approved by the Governor.

16. Contractors' National Labor Relations Board Certification. By signing this Agreement, ICC certifies under penalty of perjury that there are no outstanding actions against it and no unappeasable judicial rulings resulting from ICC's failure to comply with any order of the National Labor Relations Board in the two calendar years preceding the date of the within Agreement.

17. Limitation of Liability. ICC shall not be liable for any claims, losses, injuries, or damages arising from or related to the Code. Without limiting the foregoing, in no event shall ICC be liable for any claims in any way relating to (a) alleged deficiencies or inadequacies in the content of, or (b) enforcement (or lack thereof) of, any code adopted by the State of California or by any agency, department, instrumentality or political subdivision thereof.

18. Waivers and Certain Claims.

18.1 Nothing contained in this Agreement shall be deemed an admission of liability by either Party to the other Party with regard to the subject matter of this Agreement, or any related matter. Except where specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each party shall be individually and severally liable for its own obligations under this Agreement.

18.2 No provision of this Agreement may be waived, changed or modified orally, but such may be accomplished only by a written Amendment to this Agreement and signed by both Parties.

19. Further Assurances. Each Party hereto shall cooperate and shall take such further action and shall execute and deliver such further documents as may be reasonably requested by the other Party hereto in order to effectuate and/or facilitate the purpose and intent of this Agreement.

20. Compliance with Laws. ICC shall use the Code in strict compliance with the terms of this Agreement and all applicable federal, state, county and municipal laws, ordinances, statutes, rules and regulations.

21. Entire Agreement. This Agreement constitutes, and is intended to constitute, the complete and entire agreement between the Parties with respect to the subject matter hereof and expressly supersedes any and all prior oral or written negotiations or agreements between the Parties hereto with respect to the subject matter hereof. In the event that a conflict exists between the terms of this Agreement and the terms of any other agreement between the Parties, the terms of this Agreement shall govern and control.

22. Severability. If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the Parties shall reform this Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intent of the stricken provision.

23. Continuing Obligations. Any rights and obligations under this Agreement that by their nature extend beyond the term of this Agreement, including but not limited to the obligation to maintain confidentiality of proprietary information, shall survive any expiration or termination of this Agreement. Nothing contained in this Agreement, however, shall (i) prevent CBSC from approving, codifying, adopting, publishing, marketing, selling, or distributing any code(s) other than ICC copyrighted codes, (ii) apply to any code(s) other than ICC copyrighted codes, or (iii) require that CBSC obtain ICC's approval to approve, codify, adopt, publish, market, sell, or distribute any code(s) other than ICC copyrighted codes, all of which are expressly reserved. Provided, further, that CBSC may use any of the ICC copyrighted codes and/or the Code for the purposes set forth in this Paragraph 24 pursuant to future

contracts or agreements between the Parties hereto. Nothing contained in this paragraph shall constitute a waiver of rights by either Party.

24. Waiver. Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter.

25. Non-Frustration. Neither Party to this Agreement shall commit any act or take any action which frustrates or hampers the rights of the other Party under this Agreement. Each Party shall act in good faith and engage in fair dealing when taking any action under or related to this Agreement.

26. Applicable Law. This Agreement shall be interpreted in accordance with the laws of the State of California, and any action arising out of this Agreement shall be brought in the Superior Court of the State of California in and for the County of Sacramento and/or the United States District Court for the Eastern District of California. Each Party hereto consents to the use of such forum and agrees not to challenge such forum on the basis of inconvenience, lack of personal jurisdiction, or any other basis whatsoever.

27. Headings. The headings used in this Agreement are for reference purposes only, and shall not be deemed a part of this Agreement, or used in the construction or interpretation of any portion hereof.

28. Construction. In the case of uncertainty regarding the language in any part of this Agreement, the language shall be construed in accordance with its fair meaning rather than being interpreted against the Party who caused the uncertainty to exist.

29. Third party Beneficiaries. No person or legal entity not a party to this Agreement is intended to benefit by any of its provisions.

30. Judgments and Determinations. When the terms of this Agreement provide that action may or must be taken or that the existence of a condition may be established based on a judgment or determination of a Party, such judgment shall be exercised or such determination shall be made in good faith, in a timely manner, and shall not be arbitrary or capricious.

31. Attachments. Attachments A through G attached hereto are, by this reference, made a part of this Agreement as if herein written.

32. Amendments. The within Agreement may be amended in writing only and such an amendment must be fully executed by both Parties hereto before they become effective. Oral agreements are herein declared to be not valid and not enforceable.

33. Signatures. The Parties, having carefully read this Agreement and having consulted or have been given an opportunity to consult counsel of their choice, have indicated their agreement to all of the above terms by executing this Agreement on the date first written above. Each signatory hereto represents that it is authorized to sign this Agreement on behalf of the Party it purports to represent.

INTERNATIONAL CODE COUNCIL

By: _____
Mark A. Johnson, Senior Vice President

CALIFORNIA BUILDING STANDARDS COMMISSION

By: _____
E. David Walls, Executive Director