

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

PUBLIC.RESOURCE.ORG, INC., a nonprofit
California corporation,

Plaintiff,

v.

OREGON DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES,

Defendant.

Case No. 24CV30573

**AMENDED COMPLAINT FOR
DECLARATORY RELIEF**

**NOT SUBJECT TO MANDATORY
ARBITRATION**

Fee Authority: ORS 21.135(1), (2)(f)

INTRODUCTION

1.

Article I, Section 8 of the Oregon Constitution states: “No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever.” Despite this clear command, an Oregon administrative agency, the Oregon Department of Consumer and Business Services (“BCD”) has taken action to prevent the public from freely accessing Oregon law. In particular, BCD has entered into contracts with various private businesses that shield the entirety of the Oregon Electrical, Plumbing, Structural, Mechanical, and Residential Specialty Codes, and the Fire Code (collectively, the “Codes”) from full and free public access. In short, BCD has outsourced ownership and possession of Oregon law to private parties that charge citizens substantial sums for full access to the rules and regulations that govern their daily lives. This declaratory relief action—brought under ORS 28.010 and ORS 192.407—seeks to vindicate the constitutional right to freely speak and know the law.

1 **PARTIES**

2 2.

3 Plaintiff Public.Resource.Org, Inc. ("Public Resource") is a tax-exempt, non-profit, public
4 interest organization whose mission is to make the laws openly accessible and free to all citizens.

5 3.

6 Defendant BCD is an Oregon business regulatory and consumer protection agency. BCD
7 adopts model codes, standards and other publications through administrative rule-making to create
8 the Codes and manage their publication and dissemination to the public.

9 **JURISDICTION AND VENUE**

10 4.

11 Jurisdiction and venue are appropriate in the Circuit Court of the State of Oregon, County
12 of Marion, because the defendant BCD is a State of Oregon agency headquartered in Marion
13 County, Oregon. ORS 14.080(1).

14 **FACTUAL ALLEGATIONS**

15 5.

16 For the last fifteen years, Public Resource's mission has been to make government records
17 and the law more readily available and accessible to citizens.

18 6.

19 To accomplish this mission, Public Resource acquires copies of such records, including
20 legal decisions, tax filings, statutes, and regulations, and publishes them online in easily accessible
21 formats that make them more useful to readers, entirely free of charge. Public Resource operates
22 websites such as public.resource.org and law.resource.org, and makes extensive use of "cloud"
23 services such as archive.org and youtube.com. Public Resource hosts copies of safety codes that
24 various government entities have incorporated into law, such as building codes, fire safety codes,
25 pipeline safety standards, and food safety standards, at law.resource.org and on the non-profit
26 Internet Archive. Public Resource has championed free, open, and public access to laws and
27 standards across jurisdictions and national borders.

1 7.

2 Recently, Public Resource secured a favorable decision from a constitutional (en banc)
3 bench of the Court of Justice of the European Union, mandating that the harmonized technical
4 standards must be freely available to all Europeans.¹ In 2020, the United States Supreme Court
5 held in favor of Public Resource in ruling that the annotations to Georgia’s annotated code were
6 “the law,” and therefore ineligible for copyright ownership under the government edicts doctrine.
7 In 2023, the United States Circuit Court for the District of Columbia held that Public Resource’s
8 online posting of technical standards, which were incorporated into law, constituted “fair use.”
9 *Am. Soc’y for Testing & Materials v. Public.Resource.Org, Inc.*, 82 F.4th 1262 (DC Cir 2023).

10 8.

11 Public Resource reformats some of the laws it publishes, including some public safety
12 codes, in order to make them easier to find, searchable, copyable, and accessible.

13 9.

14 Public safety codes govern essential aspects of everyday life. They often carry civil or
15 criminal penalties. Simply put, they are laws.

16 10.

17 BCD has enacted into law, and enforced, construction, fire, and other public safety codes.

18 11.

19 BCD also executed contracts with third parties such as the International Code Council, the
20 National Fire Protection Agency, and the International Association of Plumbing and Mechanical
21 Officials (“Private Standards Companies”). (**Exhibit 1.**) The Private Standards Companies
22 develop and publish model specialty codes for purchase. BCD purchased these model specialty
23 codes and incorporated them into its official administrative rules. However, BCD only
24 incorporates *part* of the model specialty codes and, as a result, the official rules do not contain the
25 entire text of the model specialty codes that are incorporated by reference. *See* OAR 837-040-

26 ¹ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-06/cp230110en.pdf> (press release
27 on decision from Court of Justice of the European Union, Luxembourg, 22 June 2023).

1 00010(2) (“[T]he 2022 Oregon Fire Code which is the 2021 edition of the International Fire Code,
2 as published by the International Code Council, and as amended by the Department of the State
3 Fire Marshal, is adopted.”).

4 12.

5 In 2023, Public Resource, by and through its counsel, petitioned BCD to disclose the
6 integrated digital copies of the Codes on behalf of Public Resource.

7 13.

8 BCD refused Public Resource’s request. (**Exhibits 2, 3.**) BCD stated that it did not have
9 an ownership interest in digital copies of the integrated Codes, and did not possess any electronic
10 copies. (*Id.*) BCD stated that to obtain the full text of adopted codes, Public Resource had to
11 purchase them from the Private Standards Companies, or view them through the “free” versions
12 online.

13 14.

14 The “free” versions of the Codes are hosted by the Private Standards Companies in a
15 technologically locked-down format. The “free” versions do not allow users to copy, search, print,
16 or reproduce the Codes in any way. Further, the “free” versions of the codes are subject to private
17 “Terms of Use” which require users to enter into an agreement with the Private Standards
18 Companies and consent to restricted usage of the Codes. As a result, users are unable to “speak”
19 the Codes freely without fear of a lawsuit, even though they are public records.

20 15.

21 It is the official position of BCD that full provisions of Oregon law that govern citizens’
22 lives can only be fully accessed by purchasing them from private companies, subject to private
23 Terms of Use and technological constraints, which outright forbid users from speaking, discussing,
24 or commenting upon the codes freely in the public domain.

1 **CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**

3 **(Violation of Article I, Section 8 of Oregon Constitution; Declaratory Relief – ORS 28.010)**

4 16.

5 Public Resource repeats and incorporates herein the allegations in paragraphs 1 through 15
6 above.

7 17.

8 The Oregon Constitution guarantees the constitutional right to freely speak, write, or print
9 on any subject whatsoever. Under the Oregon Constitution, all forms of expression are protected.
10 *Bank of Oregon v. Independent News, Inc.*, 298 Or 434, 439–40 (1985). State action that
11 discriminates based on the content of speech or writing violates Article I, Section 8. *State v.*
12 *Robertson*, 293 Or 402, 416 (1982).

13 18.

14 A limited exception exists if the state action restraining speech is confined within a
15 historical tradition that was well-established when the guarantee of free speech was adopted in
16 1859 such as perjury, solicitation, forgery, or fraud. *Id.* at 412.

17 19.

18 No applicable historical tradition supports BCD’s pattern, practice, and outright policy of
19 restricting Oregonians’ free access to, and the ability to speak, write, and know Oregon laws. No
20 applicable historical tradition supports BCD’s pattern, practice, and policy of outsourcing Oregon
21 laws to the Private Standards Companies, which grant full access to the integrated codes only to
22 paying customers.

23 20.

24 Public Resource and Oregon citizens have a right to freely speak the laws to which they
25 are subject, including the Codes which carry penalties for violations. Public Resource and
26 Oregonians have a constitutional right to view, copy, comment upon, and share the Codes under
27 Article I, § 8. That right has been abridged by BCD, whose pattern, practice, and policy of

1 off-loading possession and control of the Codes has vitiated Public Resource’s (and the public’s)
2 right to view and speak their contents freely.

3 21.

4 ORS 28.010 authorizes the Court to declare the rights, status, and other legal relations of
5 the parties. Pursuant to ORS 28.010, Public Resource seeks a judgment declaring: (1) that the
6 entire text of Codes, as adopted, are officially the law of the State of Oregon; and (2) that BCD or
7 any other Oregon administrative agency cannot restrict free public access to the Codes, as adopted
8 and enforced against Oregonians.

9 **SECOND CLAIM FOR RELIEF**

10 **(ORS 192.407(c); 192.411; 192.431 *et seq*)**

11 22.

12 Public Resource repeats and incorporates herein the allegations in paragraphs 1 through 21
13 above.

14 23.

15 The Oregon Public Records Law (“PRL”) provides that “[e]very person has a right to
16 inspect any public record of a public body in this state, except as otherwise expressly provided in
17 ORS 192.338, 192.345, and 192.355.” ORS 192.314(1).

18 24.

19 Public Resource is a “person” within the meaning of ORS 192.311, ORS 192.314 *et seq.*,
20 and ORS 28.130.

21 25.

22 The Codes are public records under Oregon law. ORS 192.005(5) provides that a “Public
23 Record” means “any information that: (A) Is prepared, owned, used or retained by a state agency
24 or political subdivision; (B) Relates to an activity, transaction or function of a state agency or
25 political subdivision; and (C) Is necessary to satisfy the fiscal, legal, administrative or historical
26 policies, requirements or needs of the state agency or political subdivision.” The Codes qualify as
27 a public record.

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26.

On October 9, 2023, Public Resource, by and through its counsel, submitted a written public records request in compliance with the PRL. Public Resource requested: (1) A copy of the current version of the Oregon Electrical Specialty Code; (2) A copy of the current version of the Oregon Plumbing Specialty Code; (3) A copy of the current version of the Oregon Structural Specialty Code; (4) A copy of the current version of the Oregon Mechanical Specialty Code; (5) A copy of the current version of the Oregon Residential Specialty Code; and (6) A copy of the current version of the Oregon Fire Code. **(Exhibits 2, 3.)**

27.

BCD adopts the codes as law, therefore they should be considered the “custodian” of the codes.

28.

On October 11, 2023, BCD responded, through the Attorney General’s office, pointing Public Resource to a link where they could *purchase* the Oregon Fire Code for a fee. **(Exhibits 2, 3.)**

29.

BCD and the Oregon Department of Justice have confirmed that BCD’s contracts with the Private Standards Companies are drafted so that BCD, the Oregon state agency division responsible for adoption, management, and distribution of the Codes, does not have possession of an integrated electronic copy of the Codes which could be produced pursuant to a valid request under the PRL. **(Exhibits 2, 3.)**

30.

To date, BCD has not invoked any exemption to disclosure for the Codes. **(Exhibits 2, 3.)**

31.

Because BCD has not, and cannot, invoke any exemption that applies to the Codes, BCD has violated the PRL.

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32.

The request is not “completed” under ORS 192.329(2). Therefore, BCD has violated the PRL by not completing the request.

33.

Pursuant to ORS 192.407 and ORS 192.411, Public Resource seeks a judgment and order from this Court, pursuant to the PRL, declaring: (1) that the Codes are “public records” under the PRL, (2) that BCD is the custodian of the Codes, (3) that BCD is not exempt from producing the codes, and (4) directing BCD to make the Codes available to Public Resource pursuant to its valid request under the PRL.

THIRD CLAIM FOR RELIEF
(Voidance For Public Policy; Declaratory Relief – ORS 28.010)

34.

Public Resource repeats and incorporates herein the allegations in paragraphs 1 through 33 above.

35.

To the extent that the Court finds that the Codes are public records, but that BCD has satisfied its obligations under the PRL because it does not have possession of the Codes as a result of BCD’s contracts with the Private Standards Companies to maintain sole possession, Public Resource seeks an alternative basis of relief. Specifically, Public Resource seeks a declaratory judgment – pursuant to the Oregon Declaratory Judgements Act, ORS 28.010 *et seq* – that BCD’s contracts with the Private Standards Companies are void for constitutional and public policy reasons.

36.

The Oregon Constitution guarantees the constitutional right to freely speak, write, or print on any subject whatsoever. Under the Oregon Constitution, all forms of expression are protected.

1 *Bank of Oregon v. Independent News, Inc.*, 298 Or 434, 439–40 (1985). State action that
2 discriminates based on the content of speech or writing violates Article I, Section 8. *State v.*
3 *Robertson*, 293 Or 402, 416 (1982).

4 37.

5 Further, the PRL provides that “[e]very person has a right to inspect any public record of a
6 public body in this state, except as otherwise expressly provided in ORS 192.338, 192.345, and
7 192.355.” ORS 192.314(1).

8 38.

9 BCD has entered into contracts with the Private Standards Companies which, through their
10 terms and express interpretation thereof, circumvent BCD’s statutory directive under the PRL to
11 provide public records to members of the public pursuant to a request.

12 39.

13 A public body, such as BCD, cannot exempt itself from its responsibilities under the PRL
14 by adopting a policy that dispossesses BCD of possession of public records that are rightfully
15 subject to production under the PRL.

16 40.

17 Further, BCD’s contracts, and the enforcement of them by the Private Standards
18 Companies, violate Article I § 8 of the Oregon Constitution because Public Resource, and the
19 public at large, are not free to “speak” the Codes, despite their binding nature and fundamental
20 importance to public discourse.

21 41.

22 An agreement is illegal if it is contrary to law, morality or public policy. *Bagley v. Mt.*
23 *Bachelor, Inc.*, 356 Or 543, 545, 340 P3d 27, 30 (2014) (“Plain examples of illegality are found in
24 agreements made in violation of some statute; and, stating the rule broadly, an agreement is illegal
25 if it violates a statute or cannot be performed without violating a statute.”).

1 “Courts determine whether a contract is illegal by determining whether it violates public
2 policy as expressed in relevant constitutional and statutory provisions and in case law.” *Id.* “Public
3 policy analysis asks whether the contract provision at issue threatens harm to the public as a whole,
4 including by contravening the constitution, statutes, or judicial decisions of Oregon.” *Id.*

5 42.

6 Public Resource has standing as a nonparty to the contracts because its legally recognized
7 constitutional interests are greatly impacted. *See Morse Bros. Presstress, Inc. v City of Lake*
8 *Oswego*, 55 Or App 960, 962-63 (1982) (holding that a non-party to a contract had standing to
9 challenge it and that “standing to bring a declaratory judgment proceeding does not depend on the
10 direct involvement of the plaintiff with the defendant.”). As such, the threshold question for
11 standing to seek declaratory judgment is whether the plaintiff can show some injury or other impact
12 on a legally recognized interest in the correct application of the law. *Id.* at 963 (citation omitted.)

13 43.

14 BCD’s contracts with the Private Standards Companies violate public policy that is plainly
15 expressed in the Oregon Constitution (Article I, § 8), the Oregon Public Records Law
16 (ORS 192.001, *et seq*), and the equitable precept that access to the law should not, and cannot be
17 metered through private parties who require citizens to pay to view, comment upon, and speak the
18 text of those government edicts to which they are subject. *Georgia v. Public.Resource.Org, Inc.*,
19 140 S Ct 1498, 1507 (2020) (“The animating principle behind this rule is that no one can own the
20 law. Every citizen is presumed to know the law, and it needs no argument to show . . . that all
21 should have free access to its contents.”) (citations and quotations omitted) (ellipses in original).

22 44.

23 Accordingly, ORS 28.010 authorizes the Court to declare the rights, status, and other legal
24 relations of the parties. Pursuant to ORS 28.010, Public Resource seeks a judgment declaring that
25 BCD’s contracts with the Private Standards Companies are void to the extent that they restrict,
26 impede, or outright prevent BCD from complying with its obligations to produce public records
27 under the PRL.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiff prays for relief as follows:

3 1. A declaration that the entire text of provisions from model specialty codes that are
4 incorporated into BCD's administrative regulations are the official laws of Oregon;

5 2. A declaration that, pursuant to the Oregon Constitution, BCD or any other Oregon
6 administrative agency cannot restrict the rights of citizens to speak the contents of the Codes;

7 3. A declaration that the public has a right to view, access, copy, and speak the laws
8 of Oregon, including the Codes;

9 4. A declaration that BCD has violated its obligations under ORS 192.329 by failing
10 to provide a copy of the Codes in response to Public Resource's lawful request;

11 5. An order, pursuant to ORS 192.431, enjoining BCD from withholding responsive
12 records improperly withheld;

13 6. A declaration that BCD's contracts with the Private Standards Companies are void
14 and unenforceable for public policy reasons;

15 7. A declaration that BCD cannot circumvent the Public Records Law by delegating
16 possession of the Codes to a private third party;

17 8. For plaintiff's costs and disbursements; and

18 9. For such other and further relief as the Court may deem just and proper.

19 DATED: January 24, 2025

20 BALLARD SPAHR LLP

21
22 By: s/ Ryan O'Hollaren
23 Kenneth R. Davis II, OSB No. 971132
24 Mohammed N. Workicho, OSB No. 186140
25 Ryan O'Hollaren, OSB No. 231160
26 Nicholas J.H. Mercado, OSB No. 245034
Telephone: 503.778.2100
docketing@ballardspahr.com

27 *Attorneys for Plaintiff Public.Resource.Org, Inc.*

1 **CERTIFICATE OF SERVICE**

2 I, Ryan O'Hollaren, hereby certify that on this 24th day of January, 2025, I caused a copy
3 of the foregoing **AMENDED COMPLAINT FOR DECLARATORY RELIEF** to be served on
4 the following:

5 Shaunee Morgan, Assistant Attorney General	<input type="checkbox"/>	Court ECF eService
6 Jill Conbere, Assistant Attorney General	<input checked="" type="checkbox"/>	by U.S. Mail
7 Ellen F. Rosenblum, Attorney General	<input checked="" type="checkbox"/>	by Electronic Mail
8 Department of Justice	<input type="checkbox"/>	by Electronic Mail pursuant to e-
9 100 SW Market Street		service agreement
10 Portland, OR 97201	<input type="checkbox"/>	by Overnight Delivery
11 E-mails: shaunee.morgan@doj.oregon.gov	<input type="checkbox"/>	by Hand Delivery
12 jill.conbere@doj.oregon.gov		

13 s/ Ryan O'Hollaren
14 Ryan O'Hollaren, OSB No. 231160

EXHIBIT 1



STATE OF OREGON

PURCHASE
ORDER (PO) NO.

70-763

PAGE

1 of 3

Agency Department of Consumer and Business Services	PO Date 05/13/21	Delivery Date 05/28/21	Bid Number n/a	Requisition No. 31456
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Contractor Name and Address International Association of Plumbing and Mechanical Officials (IAPMO) 4755 E Philadelphia Street Ontario, CA 91761	Bill To Department of Consumer and Business Services Building Codes Division (BCD) PO Box 14470 Salem, OR 97309-0404
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Contractor FEIN 95-1603192	BPO/Contract Number n/a	Agency Contact/Phone Christie Troxell – (503) 947-2363
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Ship To Department of Consumer and Business Services Building Codes Division (BCD) 1535 Edgewater Street NW Salem, OR 97304	FOB FOB DESTINATION Terms Net 45
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Item	Description	Quantity	U/M	Unit Price	Extended Amt.
1	Produce and provide the 2021 Oregon Plumbing Specialty Code (OPSC) consisting of the 2021 Uniform Plumbing Code and the State of Oregon amendments as produced by the Oregon Plumbing Board. All contents aforementioned shall be known as the 2021 Oregon Plumbing Specialty Code (OPSC). Vendor will provide the 2021 Uniform Plumbing Code in word format to Oregon. Oregon will then provide word files to IAPMO with revised text being stricken out; an arrow on side margin will be added to deletion of text. Any amendments added text must be in underline format and a double bar will be shown on the side margin. Note: Language having an extract referenced should not be edited or modified.				
2	Provide proofreading, editing and printing preparation of the 2021 Oregon Plumbing Specialty Code (OPSC). All proof iterations shall be submitted to the Oregon Building Codes Division for interim approvals. Final approval of the 2021 Oregon Plumbing Specialty Code (OPSC) shall be on printed version that exacts the finished product.				
3	Printing of the 2021 Oregon Plumbing Specialty Code (OPSC) shall be in black ink, double sided on 8-1/2" x 11-0" white stock, paper. The method of indexing, pagination and use of continuation pages are subject to Oregon Building Codes Division.				
4	All pages of the 2021 Oregon Plumbing Specialty Code (OPSC) shall be 3-hole drilled in a manner consistent for binder insertion. Each copy of the 2021 Oregon Plumbing Specialty Code (OPSC) shall be individually shrink wrapped.				
5	Provide custom 3-ring binder with artwork submitted by IAPMO and heat sealed for the insertion of the 2021				



STATE OF OREGON

PURCHASE
ORDER (PO) NO.

70-763

PAGE

2 of 3

Item	Description	Quantity	U/M	Unit Price	Extended Amt.
6	Oregon Plumbing Specialty Code (OPSC) content, layout, and design of front and back cover, and spine shall be produced by vendor. Final acceptance subject to Oregon Building Codes Division approval. Provide exact number of copies as requested by the Oregon Building Codes Division. 15 hardcopy books to be purchased from IAPMO at a discounted rate	15	ea	120.00	\$1,800.00
7	The vendor shall be responsible for arranging to sell and distribute copies of the publications to interested parties.				
8	The purchase price for the 2021 Oregon Plumbing Specialty Code (OPSC) shall be as follows: Hardcopy 3 ring binder IAPMO Member - \$120 Non-member - \$150 eBook Download Format IAPMO Member - \$112 Non-member - \$140				
9	The vendor shall provide a Read Only online version of the 2021 Oregon Plumbing Specialty Code (OPSC) on the State of Oregon, Oregon Building Codes Division website. This will be provided to the State of Oregon, Oregon Building Codes Division at no charge to the state and as a ready only document. Vendor shall provide any corrections or amendments as requested by the Oregon Building Codes Division and update the online version of the 2021 Oregon Plumbing Specialty Code (OPSC) as requested.				
10	Final acceptance of all work shall be subject to the approval of the State of Oregon Building Codes Division. Per attached Specifications Contract Contact: Laura Burns 503-373-0226 or email: Laura.L.Burns@oregon.gov				
Special Terms and Conditions: Contract Dates: 05/13/2021 - 09/30/2021				Sub Total	\$1,800.00
				Freight	
Buyer Notes				Total	\$1,800.00

This Purchase Order and the terms and conditions on page 3 constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written.

Authorized Agent/Approved Date

5/13/21

Total

STATE OF OREGON—TERMS AND CONDITIONS

1. DELIVERY: Deliveries will be F.O.B destination, unless otherwise agreed. Contractor shall pay all transportation and handling charges. Contractor is responsible and liable for loss or damage until final inspection and acceptance of the Goods. Contractor remains liable for latent defects, fraud, and warranties.

2. ACCEPTANCE: Agency may inspect and test the Goods and related Services (collectively, Goods). Agency may reject non-conforming Goods and require Contractor to correct them without charge or deliver them at a reduced price, as negotiated. If Contractor does not cure defects within a reasonable time, Agency may reject the Goods and cancel the PO in whole or in part. Title to the Goods passes to Agency in accordance with the Uniform Commercial Code, ORS chapters 71-79 (UCC), and this section does not affect or limit Agency's rights under the UCC.

3. PAYMENT: Agency shall pay Contractor within 30 days from (i) the date the Goods are delivered and accepted or (ii) the date the invoice is received, whichever is later. If Agency fails to pay within 45 days of such date, Contractor may assess overdue account charges up to a rate of 2/3% per month (8% APR) or the maximum rate allowed by law on the outstanding balance.

4. REPRESENTATIONS AND WARRANTIES: Contractor represents and warrants that:

- Unless otherwise agreed, the Goods are new and unused, (and if applicable, the current model), free and clear of any liens or encumbrances, and carry full manufacturer warranties;
- Contractor shall transfer all manufacturer warranties to the State;
- Delivered Goods will comply with specifications and be free from defects in labor, material and manufacture;
- Contractor owns or has the right to transfer or sell the Goods to Agency;
- Contractor has the authority to enter into this PO and this PO is a binding obligation upon Contractor;
- Contractor is an independent contractor and its provision of the Goods creates no potential or actual conflict of interest as defined in ORS 244;
- Contractor shall comply with the tax laws of this state and all political subdivisions;
- Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State, and
- All implied and express warranties under the UCC are incorporated in this PO.

These representations and warranties are cumulative and are in addition to and not in lieu of any other representations or warranties found in this PO or the law.

5. TERMINATION:

- The parties may terminate this PO by mutual agreement.
- Agency may terminate this PO at any time upon written notice to Contractor. Upon receipt of the written notice, Contractor shall stop performance, and Agency shall pay Contractor for Goods delivered and accepted.
- Agency may terminate this PO at any time upon written notice to Contractor if Agency fails to receive funding, appropriations, or other expenditure authority.
- Agency may terminate this PO for cause upon written notice to Contractor, if Contractor breaches any PO provision, including the representations and warranties related to liquidated and delinquent debt, or is declared insolvent. Contractor shall be liable for all incidental and consequential damages resulting from its breach, including all damages as provided in the UCC.
- Agency may terminate this PO if Contractor fails to comply with the tax laws of this state or any political subdivision or Contractor violates any warranties or certification related to compliance with the tax laws of this State and any political subdivision of this State.

6. REMEDIES: Any violation or breach of this PO entitles Agency to terminate this PO, to pursue and recover any and all damages that arise from the breach and the termination of this PO, and to pursue any or all of the remedies available under this PO, at law, or in equity, including but not limited to: termination of this PO in whole or in part; collection by administrative offset or garnishment, if applicable, or withholding amounts otherwise due and owing to Contractor without penalty. The remedies set forth in this Section 6 are cumulative.

7. HOLD HARMLESS: Contractor shall indemnify, defend and hold harmless the State and its agencies, their divisions, officers, employees, and agents, from all claims, suits or actions of any nature arising out of or related to the activities of Contractor, its officers, subcontractors, agents or employees under this PO.

8. GOVERNING LAW, JURISDICTION, VENUE: This PO is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws. Any unresolved Dispute between Agency or and Contractor that arises from or relates to the PO shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of

Oregon; provided, however, if a Dispute must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing herein shall be construed as a waiver of the State of Oregon's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise or of any defenses to Claims, or as consent to jurisdiction the jurisdiction of any court.

9. FORCE MAJEURE: Neither party is responsible for delay or default caused by an event beyond its reasonable control. Agency may terminate this PO without liability to Contractor upon written notice after determining the delay or default reasonably prevents performance of this PO.

10. ASSIGNMENT/SUBCONTRACT/SUCCESSORS: Contractor shall not assign, transfer, or subcontract rights (Subcontract) or delegate responsibilities under this PO in whole or in part, without the prior written approval of Agency. This PO's provisions are binding upon and inure to the benefit of the parties to the PO and their respective successors and assigns.

11. ACCESS TO RECORDS: Contractor shall maintain all accounting records relating to this PO according to Oregon Accounting Manual (OAM) and any other records relating to Contractor's performance ("Records") for 6 years from termination or as otherwise required. Contractor shall grant the State and its agencies, the Secretary of State, the federal government, and their duly authorized representative's access to the Records, including reviewing, auditing, copying, and making transcripts.

12. COMPLIANCE WITH APPLICABLE LAWS: Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as amended. Agency's performance is conditioned upon Contractor's compliance with, 279B.220, 279B.225, 279B.230, and 279B.235, as applicable. All applicable Rules are incorporated by reference in this PO.

13. INSURANCE: Contractor shall obtain and maintain the following insurance coverage:

- **Workers' Compensation:** Contractor shall comply with ORS 656.017 and provide workers' compensation coverage for subject workers, unless exempt under ORS 656.126(2). Contractor shall ensure that its Subcontractors, if any, comply with these requirements.
- **Commercial General Liability:** Contractor shall provide and maintain insurance covering bodily injury and property damage, written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. The policy(ies) must name the State of Oregon as additional insured.

14. FORCE MAJEURE: Neither Contractor nor Agency may be held responsible for delay or default caused by events beyond its reasonable control. Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and diligently pursue its performance under this PO.

15. SAFETY DATA SHEETS: As applicable, Contractor shall provide Agency with a Safety Data Sheet (SDS) for any Goods which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use 29 CFR 1910.1200(g)(6)(iii). Contractor shall label, tag or mark such Goods.

16. RECYCLABLE PRODUCTS: Unless otherwise required, Contractor shall use recycled and recyclable products to the maximum extent economically feasible in the performance of the PO. These products shall include recycled paper, recycled PETE products, other recycled products (ORS 279A.010(1)(gg),(hh),(ii)), and other recycled plastic resin products.

17. AMENDMENTS: All amendments to this PO must be in writing, approved by Agency.

18. SEVERABILITY: If a court of competent jurisdiction declares any provision of this PO to be invalid, the other provisions and the rights and obligations of the parties remain in effect.

19. WAIVER: Agency's failure to enforce any provision of this PO is not a waiver or relinquishment by Agency of its rights to such performance in the future or to enforce any other provisions.

20. AWARD TO FOREIGN CONTRACTOR: If Contractor is not registered to do business or has no office in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this PO. Agency may withhold final payment under this PO until Contractor has met this requirement.

21. TAX CERTIFICATION: Contractor hereby certifies under penalty of perjury: (a) the number shown on this form is the correct Federal Employer Identification Number; (b) it is not subject to backup withholding because (i) it is exempt from backup withholding, (ii) it has not been notified by the IRS that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that it is no longer subject to backup withholding; and (c) it is not in violation of any Or

NS.

STATE OF OREGON
OREGON BUILDING CODES DIVISION & OREGON PLUMBING BOARD
SPECIFICATIONS

OREGON PLUMBING SPECIALTY CODE

3/18/21

For: OREGON BUILDING CODES DIVISION

Specifications By: IAPMO

Approved By:

BIDDER TO COMPLETE THE FOLLOWING INFORMATION:

Company Name: International Association of Plumbing and Mechanical Officials
Prepared By: Hugo Aguilar, Sr. VP of Codes & Standards

Address: 4755 E. Philadelphia Street, Ontario CA 91761

Phone: 909-472-4110

Fax: 909-472-4216

NOTICE: OREGON shall review the requirements and IAPMO shall complete right hand column, indicating specific size, make and model of all components when not exactly as specified. State "As Specified" if item is exactly as shown in the left column.

REQUIREMENTS	INDICATE EXCEPTION OR "AS SPECIFIED" BELOW
<p>1 Produce and provide the 2020-2021 Oregon Plumbing Specialty Code (OPSC) consisting of the 2021 Uniform Plumbing Code and the State of Oregon amendments as produced by the Oregon Plumbing Board. All contents aforementioned shall be known as the 2020-2021 Oregon Plumbing Specialty Code (OPSC).</p> <p>Vendor will provide the 2021 Uniform Plumbing Code in word format to Oregon. Oregon will then provide word files to IAPMO with revised text being stricken out; an arrow on side margin will be added to deletion of text. Any amendments added text must be in underline format and a double bar will be shown on the side margin. Note: Language having an extract referenced should not be edited or modified.</p>	<p>As Specified</p> <p>Start Date: April 2021 Due Date: August 2021</p>

STATE OF OREGON
OREGON BUILDING CODES DIVISION & OREGON PLUMBING BOARD

SPECIFICATIONS
(Continued)

For: OREGON BUILDING CODES DIVISION

REQUIREMENTS	INDICATE EXCEPTION OR "AS SPECIFIED" BELOW
2 Provide proofreading, editing and printing preparation of the 2020-2021 Oregon Plumbing Specialty Code (OPSC). All proof iterations shall be submitted to the Oregon Building Codes Division for interim approvals. Final approval of the 2020-2021 Oregon Plumbing Specialty Code (OPSC) shall be on printed version that exacts the finished product.	As Specified
3 Printing of the 2020-2021 Oregon Plumbing Specialty Code (OPSC) shall be in black ink, double sided on 8-1/2" x 11-0" white stock, paper. The method of indexing, pagination and use of continuation pages are subject to Oregon Building Codes Division.	As Specified
4 All pages of the 2020-2021 Oregon Plumbing Specialty Code (OPSC) shall be 3-hole drilled in a manner consistent for binder insertion. Each copy of the 2020-2021 Oregon Plumbing Specialty Code (OPSC) shall be individually shrink wrapped.	As Specified
5 Provide custom 3-ring binder with artwork submitted by IAPMO and heat sealed for the insertion of the 2020-2021 Oregon Plumbing Specialty Code (OPSC) content, layout, and design of front and back cover, and spine shall be produced by vendor. Final acceptance subject to Oregon Building Codes Division approval.	As Specified
6 Provide exact number of copies as requested by the Oregon Building Codes Division.	15 books to be purchased from IAPMO at a discounted rate

STATE OF OREGON
OREGON BUILDING CODES DIVISION & OREGON PLUMBING BOARD

SPECIFICATIONS
(Continued)

For: OREGON BUILDING CODES DIVISION

REQUIREMENTS	INDICATE EXCEPTION OR "AS SPECIFIED" BELOW
7 The vendor shall be responsible for arranging to sell and distribute copies of the publications to interested parties.	As Specified
8 The purchase price for the 2020-2021 Oregon Plumbing Specialty Code (OPSC) shall be as follows: Hardcopy 3 ring binder IAPMO Member - \$120 Non-member - \$150 eBook Download Format IAPMO Member \$112 Non-member - \$140	As Specified
9 The vendor shall provide a Read Only online version of the 2020-2021 Oregon Plumbing Specialty Code (OPSC) on the State of Oregon, Oregon Building Codes Division website. This will be provided to the State of Oregon, Oregon Building Codes Division at no charge to the state and as a ready only document. Vendor shall provide any corrections or amendments as requested by the Oregon Building Codes Division and update the online version of the 2020-2021 Oregon Plumbing Specialty Code (OPSC) as requested.	As Specified
10 Final acceptance of all work shall be subject to the approval of the State of Oregon Building Codes Division.	As Specified

STATE OF OREGON CONTRACT FOR THE PURCHASE OF SERVICES (Contract)

This Contract is between the State of Oregon acting by and through its Department of Consumer and Business Services, Building Codes Division, hereafter called Agency A, and the State of Oregon acting by and through its Oregon Office of State Fire Marshal, hereafter called Agency B (collectively "the Agency").

International Code Council
500 New Jersey Ave, NW, 6th Floor
Washington, DC 20001
800-422-7233 ext. 7718
snunes@iccsafe.org
www.iccsafe.org
FEIN: 36-3999004

Hereafter called Contractor.

Agency's Contract Administrators for this Contract are:

Agency A
Shane Sumption
Department of Consumer and Business Services, Building Codes Division
1535 Edgewater
Salem, OR 97304
phone: (503) 373-1200
fax: (503) 378-2322
shane.r.sumptionr@state.or.us
http://bcd.oregon.gov/

Agency B
Cort Dokken
Oregon Office of State Fire Marshal
4760 Portland Rd NE
Salem, OR 97305
Phone: (503) 934-0228
Fax: (503) 934-8372
CDokken@osp.state.or.us
www.oregon.gov/osp/sfm

This Contract is effective on the date it has been signed by all parties and all required State of Oregon approvals have been obtained. This Contract expires on April 1, 2026. The parties may extend the term of this Contract. Contractor agrees to perform, and Agency agrees to pay for, the services and deliverables described in section 1 (the "Services"). Contractor also agrees to deliver the goods described in section 1 (the "Goods").

I. STATEMENT OF SERVICES.**A. GENERAL INFORMATION.**

1. Contractor is the sole owner of the copyright to the 2012 and earlier editions of the following model building codes and anticipates creating and claiming copyright in all future editions of the International Codes (collectively, the "International Codes"):
 - a. International Building Code (IBC)
 - b. International Mechanical Code (IMC)
 - c. International Fuel Gas Code (IFGC)
 - d. International Energy Conservation Code (IECC)
 - e. International Residential Code (IRC)
 - f. International Green Construction Code (IGCC)
 - g. International Fire Code (IFC)
 - h. In addition, for purposes of this Agreement, the term "International Codes" shall include draft versions of certain tables from the 2015 IECC as follows: Tables 503.2.3 (1) through 503.2.3 (10), and 504.2. The Agency acknowledges that the Tables are in draft version at this time and are subject to change.

2. The Agency is adopting the following building codes and construction standards (collectively, the "Oregon Codes"), which are based on and include the 2012 International Codes and material developed by Agency or otherwise by the State of Oregon, (the "Oregon Amendments");
 - a. 2014 Oregon Structural Specialty Code (OSSC) which is based on the 2012 International Building Code and the energy efficiency requirements commonly referred to as the "2014 Oregon Energy Efficiency Specialty Code (OEESC)" which is based on the 2010 Oregon Energy Efficiency Specialty Code and originally based on the 2009 International Energy Conservation Code;
 - b. 2014 Oregon Mechanical Specialty Code (OMSC) which is based on the 2012 International Mechanical Code and International Fuel Gas Code;
 - c. 2015 Oregon Residential Specialty Code (ORSC) which is based on the 2011 Oregon Residential Specialty Code and originally based on the 2009 International Residential Code;
 - d. 2014 Oregon Fire Code (OFC) which is based on the 2012 International Fire Code.

For purposes of this Agreement, the Oregon Codes shall include the next editions of any and all such codes, as defined above, regardless of whether they are officially titled the 2014, 2015, 2016, and other future year editions at the time of publication and which are based on and include the 2012 International Codes or future editions of the International Codes. This does not apply to future Oregon Codes if the future code is not based on an International Code.

3. The Contractor agrees to publish the Oregon Codes in print and electronic formats. The Agency agrees that, during the term of this Agreement, it will not enter into a license or other agreement with a publisher other than Contractor for publication of the Oregon Codes, in print or electronic version unless Agency bases the Oregon Codes on other nationally recognized codes or standards.

B. REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE.

1. Integration of Codes:

- a. Agency may, from time to time, prepare one or more Oregon Amendments to adopt the equivalent Oregon Code. Upon delivery of one or more of the Oregon Amendments to Contractor, Contractor shall integrate the Oregon Amendments with the International Codes to produce the draft Oregon Codes.
- b. Contractor shall deliver to Agency for approval the first draft manuscript of the Oregon Codes within thirty (30) business days of receipt of the Oregon Amendments from Agency. Contractor shall edit and proof the draft Oregon Codes and deliver the draft Oregon Codes in a PDF of Blueline format.

2. Printed Codes:

- a. Subject to Agency approval of the draft Oregon Codes, Contractor shall produce and make available for sale in a bound format the Oregon Codes within forty (40) business days of Agency's approval.
- b. Contractor is responsible to publish, typeset, do graphic-design, print and distribute the Oregon Codes. The Oregon Codes shall be produced in a loose-leaf format, with a custom 3-ring binder and text printed on white stock with holes drilled to 5/16".
- c. Contractor shall deliver two complimentary copies of the published Oregon Codes to Agency.
- d. For Agency use, Contractor shall make available additional copies of the published Oregon Codes to Agency at 40% off the single unit list/retail price on orders of a minimum of twenty-five (25) copies, plus Contractor shall provide shipping costs, without charge, up to 5% of the total order.

3. Electronic Copies:

- a. The Contractor shall offer at least two electronic versions of the Oregon Codes available and they are:
 - 1) PDF Download for purchase, and 2) View/Read-Only version for Free Public viewing.
 - i. Both of these versions shall be on the Contractor's website within 40 business days of Agency's approval of the Blueline.

- ii. Contractor shall integrate amendments as requested by Agency throughout the code cycle within forty (40) business days of receiving such amendments from Agency. The Contractor shall charge the fees listed under section II(A)(ii) for the provision of this service.
 - iii. Contractor shall display the 2 most recently adopted versions of Oregon Codes, on the View/Read-Only version for Free Public viewing. Additionally, the Agency may request additional code additions to be hosted online, following applicable provisions of Section II A ii.
4. The Contractor may:
- a. Use the State of Oregon trademark/seal solely for the publication of the Oregon Codes. This trademark/seal may be located on the cover and inside pages of the Oregon Codes. The Agency represents and warrants that it has the authority to grant the right to use the State of Oregon trademark/seal and shall indemnify Contractor, subject to the limitations of Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act, for any claims in connection with this specified use.
 - b. Insert an advertisement in the Oregon Codes on related products and services.
 - c. Market the Oregon Codes through their web site.
 - d. Offer the Oregon Codes in any electronic format of their choosing.

C. ACCEPTANCE CRITERIA AND PROCESS.

1. The Agency shall:
- a. Provide amendments to one or more of the Oregon Codes upon preparation for adoption of new Oregon Codes.
 - b. Deliver the amendments (in MS Word format) to Contractor.
 - c. Purchase books via purchase order. The purchase order must:
 - i. Reference this contract to receive the discount listed in §I.B.2.d.
 - ii. Have a minimum order quantity of twenty-five (25).
 - d. Inspect and either accept or reject each deliverable within ten (10) business days from the date Contractor delivers the deliverable or Good to Agency. If Agency does not provide written notice of acceptance or rejection of the deliverable to Contractor within ten (10) business days following the date of delivery, Agency is deemed to have accepted the deliverable. If Agency rejects the deliverable or Goods, then Agency's written notice of rejection shall, at a minimum, itemize the apparent defects and include:
 - i. a description of nonconformance between the deliverables or Goods and the Contract requirements and specifications for that deliverable or Good, including warranties;
 - ii. a description of any other nonconformance of the deliverable or Good (including late delivery); and
 - iii. a statement indicating whether Contractor may cure the nonconformance and if so, the method in which and time period within which Contractor shall cure.
- Contractor's failure to deliver the deliverables and Goods in accordance with the requirements of this Contract is a material breach of this Contract.

II. COMPENSATION.

The total amount available for payment to Contractor under section II is

Agency A:	\$105,000
Agency B:	\$50,000

A. METHOD OF PAYMENT FOR SERVICES.

Each Agency shall pay Contractor the amounts specified for each of the following deliverables and Goods that Agency has accepted in accordance with section I.C:

- i. \$6,000.00 per code, listed in §I (A)(2), posted to contractor's website. Agency A shall have no more than four (4) codes with each code having no more than four (4) editions for each code. For the purposes of codes only published in 2014, Agency A shall pay \$6000.00 for the OSSC and another \$6000.00 for the OEESC. Agency B shall have no more than one (1) code with no more than four (4) editions.

- ii. \$500.00 annually per code, listed in §I (A)(2), for hosting the Oregon Codes on the website. Agency A shall have no more than four (4) codes with each code having no more than four (4) editions for each code. Agency B shall have no more than one (1) code with no more than four (4) editions.
 - iii. Integration of additional code supplements and errata to the Oregon Codes to be integrated to the Oregon Codes on the ICC website shall be charged as follows: \$20.00 per page for up to 30 pages and \$32.00 per page for more than 30 pages.
- B. BASIS OF PAYMENT FOR SERVICES.**
- 1. Milestone progress payments for completed Services. Agency shall pay Contractor all amounts due for Services completed and accepted by Agency at the following milestones after Agency's approval of Contractor's invoice to Agency for those Services and Goods:
 - a) Upon approval of Blueline.
 - b) Upon integrating additional code amendments to the Oregon Codes and post the updated Oregon Codes to the Contractor's website.
 - c) Annually for hosting of Oregon codes online.
- C. EXPENSE REIMBURSEMENT.**
- 1. Agency will not reimburse Contractor for any expenses that are not listed under this Contract.
- D. GENERAL PAYMENT PROVISIONS.**
- 1. Agency's Payment. Agency shall pay Contractor for Services performed and Goods delivered at the rates and prices specified in section II. Contractor shall look solely to Agency for payment of all amounts Agency owes to Contractor. Contractor shall not be compensated by any agency or department of State other than Agency for Services performed and Goods delivered.
 - 2. If Contractor is a nonresident alien as defined in 26 USC § 7701(b)(1)(B), then Contractor shall, upon execution of this Contract, deliver to Agency a completed and signed W-8 form, 8233 form, or W-9 form, as applicable, from the Internal Revenue Service ("IRS"), as evidence that Agency is not required by 26 USC 1441 to withhold part of Contractor's payment. Such forms are currently available at <http://www.irs.gov>. Agency may withhold payments to Contractor pending Agency's receipt from Contractor of the applicable, completed and signed form. If Agency does not receive the applicable, completed and signed form from Contractor, or if the IRS provides notice to Agency that Contractor's information on the form provided is incorrect, Agency will withhold as federal income tax 30% of all amounts Agency owes to Contractor under this Contract.
 - 3. Funds Available and Authorized Payments. Contractor understands and agrees that Agency's payment of amounts under this Contract is contingent on Agency receiving funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to make payments under this Contract.
- E. INVOICES.**
- 1. Contractor shall send invoices to Agency no more often than monthly for Services completed and Goods delivered and accepted by Agency in accordance with Section I. Contractor shall include in each invoice:
 - a. The Solicitation number if any, the Contractor number if any;
 - b. A detailed description of Services performed, including the name or names of the individuals who performed Services and prepared the deliverables to which the invoice applies, the dates Services were performed, all deliverables delivered during the period of the invoices, the rate or rates for Services performed, and the total cost of Services;
 - c. Itemization and explanation of all expenses for which Contractor claims reimbursement authorized under this Contract;
 - d. The quantity of Goods ordered, the quantity of Goods delivered, the date the Goods were delivered, the price per unit, if applicable; and
 - e. The total amount due and the payment address.
 - 2. Contractor shall send all invoices to:

Agency A
Building Codes Division
Attn: Fiscal and Customer Services Section Manager
P.O. Box 14470
Salem, OR 97309
or
Agency B
State Fire Marshal
Attn: FLS Branch Manager
4760 Portland Road NE
Salem, OR 97305

Contractor's claims to Agency for overdue payments on invoices are subject to ORS 293.462.

III. GENERAL TERMS AND CONDITIONS.

A. OWNERSHIP OF INTELLECTUAL PROPERTY; GRANT OF LICENSE.

- 1.a. By Contractor. As between the parties, Contractor is the copyright holder of the International Codes. Except as expressly licensed below, Agency disclaims any copyright in the material in the Oregon Amendments or the Oregon Codes taken from the International Codes. Contractor hereby grants Agency a non-exclusive, perpetual, royalty-free, irrevocable, non-transferable, worldwide license to use the International Codes solely to create the 2014 Oregon Amendments and the 2014 Oregon Codes and future editions of the Oregon Amendments and the Oregon Codes during the term of this Contract. The grant of the foregoing license is specifically limited to the right to:
- 1.a.i. Prepare derivative works of the International Codes as Agency determines is required for development of the Oregon Amendments.
 - 1.a.ii. Copy, publish, print and distribute the International Codes as part of the 2014 Oregon Codes and future Oregon codes adopted throughout the life of this Contract in the case of a material breach or default by Contractor.
1. b. By Agency. Except for the copyright in the International Codes contained therein, as between the parties, Agency is the copyright holder of the Oregon Amendments and the Oregon Codes. Agency hereby grants Contractor an exclusive, non-transferable, worldwide license to copy, publish, print, sublicense, distribute and sell the Oregon Codes. Nothing in this license grant shall be construed to prevent Agency or others on Agency's behalf from copying, publishing, printing, distributing, preparing derivative works of, or selling the Oregon Codes (i) that contain the International Codes only by reference, or (ii) contain material from the International Codes only to indicate how the Oregon Amendments differ from the International Codes.

B. OTHER REPRESENTATIONS AND WARRANTIES.

1. All express and implied warranties that are applicable to goods under ORS Chapter 72 apply to the Goods delivered under this Contract. Contractor represents and further warrants that:
- a. Contractor has the authority to enter into and perform in accordance with this Contract and that this Contract, when executed and delivered, is a valid and binding obligation of Contractor that is enforceable in accordance with its terms;
 - b. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession;
 - c. Contractor is and shall be, at all times during the term of this Contract, qualified, professionally competent, and duly licensed to perform Services; and
 - d. When used as authorized by this Contract, no Work Product infringes nor will Agency's use, duplication or transfer of the Work Product infringe any copyright, patent, trade secret or other proprietary right of any third party.

2. The warranties specified in this section are in addition to, and not in lieu of, any other warranties provided. All warranties are cumulative and shall be interpreted broadly to give Agency the greatest warranty protection available.

C. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS.

1. Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract or to Contractor's obligations under this Contract, as those laws, regulations and ordinances may be adopted or amended from time to time.
2. Agency's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010 (1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

D. AMENDMENTS.

1. All amendments to this Contract are Unanticipated Amendments unless subsection 2 of this section D is completed for Anticipated Amendments. OAR 125-246-0560 applies to all Contract amendments.
2. Anticipated amendments. Agency anticipates amending the contract to:
 - a. Extend the term of this contract to continue services.

E. TIME IS OF THE ESSENCE.

1. Contractor agrees that time is of the essence in the performance of this Contract.

F. FORCE MAJEURE.

1. Neither Agency nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract. Agency may terminate this Contract upon written notice to Contractor after reasonably determining that the delay or breach will likely prevent successful performance of this Contract.

G. INSURANCE.

1. Contractor shall obtain the insurance required under section IV prior to performing under this Contract and shall maintain the required insurance throughout the duration of this Contract and all warranty periods.

H. INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING.

1. Contractor shall perform all Services as an independent Contractor. Although Agency may (a) determine and modify the delivery schedule for Services to be performed and (b) evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any Services required under this Contract. Contractor certifies, represents and warrants that Contractor is an independent contractor of Agency under all applicable State and federal law. Contractor is not an "officer", "employee", or "agent" of Agency as those terms are used in ORS 30.265.
2. If Contractor is currently performing work for State or the federal government, Contractor by signature to this Contract represents and warrants: Contractor's performance of this Contract creates no potential or actual conflict of interest as defined by ORS 244 and that no rules or regulations of Contractor's employing agency (state or federal) would prohibit Contractor's performance of this Contract.
3. Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract, and unless required by prevailing federal law or regulations, Agency will not withhold from compensation or payments to Contractor any amount(s) to cover Contractor's federal or state tax obligations unless Contractor is subject to backup withholding. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.

I. INDEMNIFICATION.

1. GENERAL INDEMNITY. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ("CLAIMS") RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL THE CONTRACTOR BE LIABLE FOR THE CONTENT OR PERFORMANCE OF THE OREGON CODES.
2. INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION III.L.1, CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING ATTORNEYS FEES, ARISING OUT OF OR RELATING TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEM DELIVERED UNDER THIS CONTRACT BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR AGENCY'S REASONABLE USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY ("INFRINGEMENT CLAIM"); PROVIDED, THAT STATE SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.
3. STATE SHALL REASONABLY COOPERATE IN GOOD FAITH, AT CONTRACTOR'S REASONABLE EXPENSE, IN THE DEFENSE OF CLAIMS AND INFRINGEMENT CLAIMS, AND CONTRACTOR SHALL SELECT COUNSEL REASONABLY ACCEPTABLE TO THE OREGON ATTORNEY GENERAL TO DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS AND SHALL BEAR ALL COSTS OF SUCH COUNSEL. COUNSEL MUST ACCEPT APPOINTMENT AS A SPECIAL ASSISTANT ATTORNEY GENERAL UNDER ORS CHAPTER 180 BEFORE COUNSEL MAY ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, STATE, ITS AGENCIES, OFFICERS, EMPLOYEES OR AGENTS. STATE MAY ELECT TO ASSUME ITS OWN DEFENSE WITH AN ATTORNEY OF ITS OWN CHOICE AND AT ITS OWN EXPENSE AT ANY TIME STATE DETERMINES IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE. SUBJECT TO THE LIMITATIONS NOTED ABOVE, CONTRACTOR MAY DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS WITH COUNSEL OF ITS OWN CHOOSING PROVIDED THAT NO SETTLEMENT OR COMPROMISE OF ANY SUCH CLAIMS AND INFRINGEMENT CLAIMS SHALL OCCUR WITHOUT THE CONSENT OF STATE, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED.

J. ASSIGNMENT OF ANTITRUST RIGHTS.

1. CONTRACTOR IRREVOCABLY ASSIGNS TO STATE ANY CLAIM FOR RELIEF OR CAUSE OF ACTION WHICH CONTRACTOR NOW HAS OR WHICH MAY ACCRUE TO CONTRACTOR IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO CONTRACTOR FOR THE PURPOSE OF CARRYING OUT CONTRACTOR'S OBLIGATIONS UNDER THIS CONTRACT, INCLUDING, AT STATE'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.
2. CONTRACTOR SHALL REQUIRE ANY SUBCONTRACTORS HIRED TO PERFORM ANY OF CONTRACTOR'S DUTIES UNDER THIS CONTRACT TO IRREVOCABLY ASSIGN TO STATE, AS THIRD PARTY BENEFICIARY, ANY RIGHT, TITLE OR INTEREST THAT HAS ACCRUED OR WHICH MAY ACCRUE IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO THE SUBCONTRACTOR FOR THE PURPOSE OF CARRYING OUT THE SUBCONTRACTOR'S OBLIGATIONS TO CONTRACTOR IN PURSUANCE OF THIS CONTRACT, INCLUDING, AT

STATE'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION

K. EVENTS OF BREACH.

1. Breach by Contractor. Contractor breaches this Contract if:
 - a. Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
 - b. Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Contract and Contractor has not obtained the license or certificate within fourteen (14) calendar days after Agency delivers notice of breach to Contractor or a longer period as Agency may specify in the notice; or
 - c. Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform its obligations under this Contract within the time specified or any extension of that time, and Contractor fails to cure the breach within fourteen (14) calendar days after Agency delivers notice of breach to Contractor or a longer period as Agency may specify in the notice
2. Breach by Agency. Agency breaches this Contract if:
 - a. Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure its failure to pay within fourteen (14) calendar days after Contractor delivers notice of breach to Agency or a longer period as Contractor may specify in the notice; or
 - b. Agency commits any material breach of any covenant, warranty, or obligation under this Contract, fails to perform its obligations hereunder within the time specified or any extension thereof, and Agency fails to cure the breach within fourteen (14) calendar days after Contractor delivers notice of breach to Agency or a longer period as Contractor may specify in the notice.

L. REMEDIES.

1. State's Remedies. If Contractor is in breach under section III.K.1, then in addition to the remedies afforded elsewhere in this Contract, State shall be entitled to recover for any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages. State may, at Agency's option, pursue any or all of the remedies available under this Contract and at law or in equity, including, but not limited to:
 - a. Termination of this Contract under section III.M.2.;
 - b. Withholding payment of all amounts in Contractor's invoices for Services that Contractor is obligated to but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
 - c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; or
 - d. Exercise the right of setoff, and withholding of amounts otherwise due and owing to Contractor in an amount equal to State's setoff right, without penalty.These remedies are cumulative to the extent the remedies are not inconsistent, and State may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in breach under section III.K.1, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to section III.M.2.a.
2. Contractor's Remedies. If Agency terminates this Contract for convenience under section III.M.2.a, or if Agency is in breach under section III.K.2 and whether or not Contractor elects to exercise its right to terminate this Contract under section III.M.3, Contractor's sole remedy is one of the following, as applicable:
 - a. For Services compensable on an hourly basis, a claim against Agency for unpaid invoices, hours worked but not yet invoiced and authorized expenses for Services completed and accepted by Agency less any claims State has against Contractor.
 - b. For deliverable-based Services, a claim against Agency for the sum designated for completing the deliverable multiplied by the percentage of Services completed and accepted by Agency, less previous amounts paid and any claims State has against Contractor.If previous amounts paid to Contractor for Services and Goods exceed the amount due to Contractor under this section III.L.2, Contractor shall pay the excess amount to Agency immediately upon written demand.

3. Attorneys' Fees.

Except for defense costs and expenses pursuant to section III.I, neither Agency nor Contractor is entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to this Contract.

M. TERMINATION.

1. Mutual Consent.

This Contract may be terminated at any time by mutual written consent of the parties.

2. Agency:

a. Agency may, at its sole discretion, terminate this Contract for its convenience upon 30 days written notice by Agency to Contractor.

b. Agency may, in its sole discretion, terminate this Contract, immediately upon notice to Contractor, or at a later date as Agency may establish in the notice, upon the occurrence of any of the following events:

- i. Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for Services;
- ii. Federal or state laws, regulations, or guidelines are modified or interpreted in a way that either the purchase of Services by Agency under this Contract is prohibited, or Agency is prohibited from paying for Services from the planned funding source; or
- iii. Contractor is in breach under section III.K.1.

Contractor shall stop performance under this Contract as directed by Agency in any written notice of termination delivered to Contractor under this section III.M.2.

3. Contractor:

Contractor may terminate this Contract immediately upon written notice to Agency, or at a later date as Contractor may establish in the notice, if Agency is in breach pursuant to section III.K.2.

N. ACCESS TO RECORDS.

1. Contractor shall retain, maintain, and keep accessible all records relevant to this Contract ("Records") for minimum of six (6) years, or a longer period as may be required by applicable law, following Contract termination or full performance, the period required by applicable law following Contract termination or full performance, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever ending is later. Contractor shall maintain all financial Records in accordance with generally accepted accounting principles. During this Record-retention period, Contractor shall permit State, its duly authorized representatives, and the federal government access to the Records at reasonable times and places for purposes of examination and copying.

O. NOTICES.

1. All notices required under this Contract shall be in writing and addressed to the party's authorized representative. The authorized representatives are the contact persons identified on the front page of this document. Mailed notices are deemed received five (5) days after the post mark date when properly addressed and deposited prepaid into the U.S. postal service. Faxed notices are deemed received upon electronic confirmation of successful transmission to the designated fax number. Notices delivered by personal delivery are deemed received when delivered to the address specified for the receiving party's authorized representative.

P. GOVERNING LAW.

1. The Contract is governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws. To the extent not modified by the terms of this Contract, the Uniform Commercial Code as codified in ORS Chapters 71 and 72 governs the Goods sold under this Contract.

Q. VENUE; CONSENT TO JURISDICTION.

1. Any claim, action, suit or proceeding (collectively, "Proceeding") between Agency or the State of Oregon and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of State for Marion County; provided, however, if a Proceeding must be brought in a federal forum, then unless otherwise prohibited by law, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THE FORUM IS AN INCONVENIENT FORUM. Nothing in these provisions shall be construed as a waiver of State's sovereign or governmental immunity, whether derived from the

Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to Proceedings or jurisdiction based thereon.

R. SUBCONTRACTS; ASSIGNMENTS; SUCCESSORS.

1. SUBCONTRACTS. Contractor shall not enter into any subcontracts for any of Services required under this Contract without Agency's prior written consent. In addition to any other provisions Agency may require, Contractor shall include in any permitted subcontract provisions to ensure that Agency will receive the benefit of subcontractor's performance as if the subcontractor were Contractor with respect to sections I.C, III.A, III.B, III.E, III.I, III.J, III.N, III.P and III.R. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
2. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Agency's prior written consent. Agency's written consent does not relieve Contractor of any obligations under this Contract, and any assignee, transferee, or delegate is considered Contractor's agent.
3. The provisions of this Contract are binding upon, and inure to the benefit the parties and their respective successors and permitted assigns, if any.

S. THIRD PARTY BENEFICIARIES.

1. Agency and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. Agency is an intended beneficiary of the terms of this Contract.

T. SEVERABILITY.

1. If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.

U. COUNTERPARTS.

1. This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

V. INTEGRATION AND MERGER.

1. This Contract constitutes the entire agreement between the parties on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract.

W. AMENDMENTS; WAIVER.

1. This Contract may be amended to the extent permitted by applicable statutes and administrative rules, as permitted in section III.D, and as the amendment scope and process may be further described in section I, Statement of Services. No waiver, consent, or amendment of terms of this Contract shall bind either party unless in writing and signed by Agency and Contractor, and all necessary approvals have been obtained. Waivers and consents shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Contract shall not constitute a waiver by State of that or any other provision.

X. SURVIVAL.

1. In addition to all provisions which by their nature extend beyond Contract termination or full performance, the following provisions shall remain in effect beyond any Contract termination or full performance: sections II.D, III.A, III.B, III.G, III.I, III.J, III.L, III.N, III.P, III.Q, III.S, and III.X.

IV. REQUIRED INSURANCE.

During the term of this Contract, Contractor shall maintain in force at its own expense, each insurance requirement noted below:

(Agency must check boxes for A, B, C, & D. as to whether insurance is required or not.)

A. ☒ REQUIRED BY AGENCY OF CONTRACTORS WITH ONE OR MORE WORKERS, AS DEFINED BY ORS 656.027.

1. **Workers' Compensation.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

B. ☐ REQUIRED BY AGENCY ☒ NOT REQUIRED BY AGENCY

1. **Professional Liability.** This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. Contractor shall provide proof of insurance of not less than the following amounts:

C. ☐ \$1,000,000 _____ (AGENCY TO ENTER AMOUNT)
☐ REQUIRED BY AGENCY ☒ NOT REQUIRED BY AGENCY

1. **Commercial General Liability.** Not applicable.

2. **Bodily Injury/Death:**

3. ☐ \$1,000,000 _____ (Agency to enter amount)

D. ☐ REQUIRED BY AGENCY ☒ NOT REQUIRED BY AGENCY

1. **Automobile Liability.** This is to cover each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. Contractor shall provide proof of insurance of not less than the following amounts:

2. **Bodily Injury/Death:**

3. ☐ \$1,000,000 _____ combined single limit per occurrence (Agency to enter amount)
☐ \$1,000,000 _____ aggregate limit for all claims per occurrence (Agency to enter amount)

Property Damage:

4. ☐ \$1,000,000 _____ (Agency to enter amount)

E. **"TAIL" COVERAGE.** IF ANY OF THE REQUIRED LIABILITY INSURANCE IS ON A "CLAIMS MADE" BASIS, CONTRACTOR SHALL MAINTAIN EITHER "TAIL" COVERAGE OR CONTINUOUS "CLAIMS MADE" LIABILITY COVERAGE, PROVIDED THE EFFECTIVE DATE OF THE CONTINUOUS "CLAIMS MADE" COVERAGE IS ON OR BEFORE THE EFFECTIVE DATE OF THIS CONTRACT, FOR A MINIMUM OF 24 MONTHS FOLLOWING THE LATER OF

1. Contractor's completion and Agency's acceptance of all Services required under this Contract, or,
2. The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to Agency, upon Agency's request, certification of the coverage required under this section V.C.

F. **NOTICE OF CANCELLATION OR CHANGE.** THERE SHALL BE NO CANCELLATION, MATERIAL CHANGE, REDUCTION OF LIMITS OR INTENT NOT TO RENEW THE INSURANCE COVERAGE(S) WITHOUT 30 DAYS PRIOR WRITTEN NOTICE FROM THE CONTRACTOR OR ITS INSURER(S) TO THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES.

G. **CERTIFICATION OF INSURANCE.** AS EVIDENCE OF THE INSURANCE COVERAGES REQUIRED BY THIS CONTRACT, THE CONTRACTOR SHALL FURNISH ACCEPTABLE INSURANCE CERTIFICATES TO AGENCY PRIOR TO COMMENCING THE WORK. THE CERTIFICATE MUST SPECIFY ALL OF THE PARTIES WHO ARE ADDITIONAL INSUREDS. IF REQUESTED,

COMPLETE COPIES OF INSURANCE POLICIES, TRUST AGREEMENTS, ETC. SHALL BE PROVIDED TO THE STATE. THE CONTRACTOR SHALL PAY FOR ALL DEDUCTIBLES, SELF-INSURED RETENTION AND SELF-INSURANCE.

- H. **ADDITIONAL INSURED.** THE COMMERCIAL GENERAL LIABILITY AND AUTOMOBILE LIABILITY INSURANCE COVERAGES REQUIRED UNDER THIS CONTRACT SHALL INCLUDE THE STATE OF OREGON, AND ITS AGENCIES, DEPARTMENTS, DIVISIONS, COMMISSIONS, BRANCHES, OFFICERS, EMPLOYEES, AND AGENTS AS ADDITIONAL INSUREDS BUT ONLY WITH RESPECT TO CONTRACTOR'S ACTIVITIES TO BE PERFORMED UNDER THIS CONTRACT. COVERAGE SHALL BE PRIMARY AND NON-CONTRIBUTORY WITH ANY OTHER INSURANCE AND SELF-INSURANCE.

V. CERTIFICATIONS AND SIGNATURE OF CONTRACTOR'S AUTHORIZED REPRESENTATIVE.
THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR.

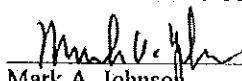
The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

- A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor;
- B. The undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323; and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620.
- C. To the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts
- D. Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;
- E. Contractor is bound by and will comply with all requirements, terms and conditions contained in this Contract; and
- F. Contractor ☐ is / ☐ is not a resident alien as defined in 26 USC § 7701 (b)(1)(check one). See section II.D.2.

VI. SIGNATURES.

Contractor

International Codes Council

 6-10-2014
Mark A. Johnson Date

Executive Vice President,
& Director of Business Development


Agency A

Department of Consumer and Business Services,
Building Codes Division

 6/13/2014
Mark Long, Administrator Date

Agency B

Department of Consumer and Business Services

 6/18/14
Nancy A. Cody, DPO Date
Office of State Fire Marshal

Cort Dokken, DPO Date

Contractor: International Code Council

COMPLETE COPIES OF INSURANCE POLICIES, TRUST AGREEMENTS, ETC. SHALL BE PROVIDED TO THE STATE. THE CONTRACTOR SHALL PAY FOR ALL DEDUCTIBLES, SELF-INSURED RETENTION AND SELF-INSURANCE.

H. **ADDITIONAL INSURED.** THE COMMERCIAL GENERAL LIABILITY AND AUTOMOBILE LIABILITY INSURANCE COVERAGES REQUIRED UNDER THIS CONTRACT SHALL INCLUDE THE STATE OF OREGON, AND ITS AGENCIES, DEPARTMENTS, DIVISIONS, COMMISSIONS, BRANCHES, OFFICERS, EMPLOYEES, AND AGENTS AS ADDITIONAL INSURED BUT ONLY WITH RESPECT TO CONTRACTOR'S ACTIVITIES TO BE PERFORMED UNDER THIS CONTRACT. COVERAGE SHALL BE PRIMARY AND NON-CONTRIBUTORY WITH ANY OTHER INSURANCE AND SELF-INSURANCE.

V. CERTIFICATIONS AND SIGNATURE OF CONTRACTOR'S AUTHORIZED REPRESENTATIVE.
THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF
CONTRACTOR.

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

- A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor;
- B. The undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323; and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620.
- C. To the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts
- D. Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>
- E. Contractor is bound by and will comply with all requirements, terms and conditions contained in this Contract; and
- F. Contractor ☐ is / ☐ is not a resident alien as defined in 26 USC § 7701 (b)(1)(check one). See section II.D.2.

VI. SIGNATURES.

Contractor
International Codes Council

Agency A
Department of Consumer and Business Services,
Building Codes Division

Mark A. Johnson
Executive Vice President,
& Director of Business Development

Mark Long, Administrator Date

Department of Consumer and Business Services

Nancy A. Cody, DPO Date

Agency B
Office of State Fire Marshal

Cort Dekken, DPO Date

**AGREEMENT BETWEEN AND
AMONG**

**BNI Publications, Inc.,
the Department of Consumer and Business
Services, Building Codes Division, State of Oregon
and
the National Fire Protection Association**

This Agreement is made as of the 1st day of August, 2017, or as of the date the Agreement is fully executed, whichever is earlier, by and between BNI Publications, Inc. (hereinafter referred to as "BNI"), the State of Oregon, by and through its Department of Consumer and Business Services, Building Codes Division (hereinafter referred to as "BCD"), and the National Fire Protection Association, Inc. (hereinafter referred to as "NFPA"), each of which is also referred to individually as "Party" and all of which are also referred to collectively as "Parties".

WHEREAS, NFPA is the sole owner of the copyright to the *NFPA 70®*, *National Electrical Code®*, 2017 edition, and holds registered trademarks in the title *National Electrical Code*, the acronym NEC and the numerical designation NFPA 70.

WHEREAS, BNI is the authorized agent and Licensee of the NFPA; and

WHEREAS, **BCD** periodically adopts, approves and codifies code standards and amendments, which may be based on existing model codes, and publishes them as the Oregon Electrical Specialty Code (hereinafter referred to as the "OESC", with the 2017 edition hereinafter referred to as the "2017 OESC"); and

WHEREAS, **BCD's** 2017 OESC incorporates by reference portions of the *NFPA 70®*, *National Electrical Code®*, 2017 edition; and

WHEREAS, **BCD** desires to publish an edition of the OESC containing those portions of *NFPA 70®*, *National Electrical Code®*, (NEC or NEC®) 2017 that have been approved and codified by **BCD**, those portions of the *NEC®* that have been modified by **BCD**, and the Oregon amendments thereto, (hereinafter referred to as the OESC/NEC) and to publish supplements to the OESC/NEC from time to time ("OESC/NEC Supplements"); and

WHEREAS, **BNI and BCD** desire to publish an edition of the OESC/NEC in a pre-assembled and fully integrated format on or before January 15, 2018; and

WHEREAS, **BNI, BCD** and NFPA want to make arrangements to market, distribute and sell the OESC/NEC through BNI;

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

Definitions;

For the purpose of this agreement:

OESC - shall mean the Oregon Electrical Specialty Code, which consists of various administrative regulations and other material developed by the state of Oregon, which may, by reference only, include material from the *National Electrical Code®* as published by the NFPA

OESC/NEC - shall mean the State of Oregon 2017 Edition Electrical SpecialtyCode, which integrates provisions from *NFPA 70®*, *National Electrical Code®* (NEC or NEC®) 2017 edition that have been adopted by **BCD**, those portions of the *NFPA 70®* that have been modified by **BCD**, and the Oregon amendments thereto, as well as the OESC/NEC Supplements.

1. Grant of License for Code.

- 1.a **By BNi.** BNi, as the authorized agent and Licensee of NFPA, hereby grants **BCD** a non-exclusive, non-transferable, worldwide sublicense to use and copy all or any portion of *NFPA 70®*, *National Electrical Code®*, 2017 edition (hereinafter referred to as the NEC® "Licensed Property"), solely to create and publish the OESC/NEC. The grant of the foregoing sublicense specifically includes the right to:
 - 1.a.i Publish, copy, print, reprint and distribute all or any part of the Licensed Property, as part of the OESC/NEC in the case of a material breach or default by BNi, as such is determined in accordance with the provisions of this agreement specifically including but not limited to Sections 10, 26 and 30 hereof.
 - 1.a.ii Make such changes to the NEC, as **BCD** determines are required for the preparation and adoption of the OESC/NEC.
- 1.b **By BCD.** **BCD** hereby grants to BNi an exclusive, non-transferable, worldwide license to compile, copy, print, publish, distribute and sell the OESC/NEC and all OESC/NEC Supplements in accordance with the terms of this Agreement. **BCD** hereby grants to BNi a non-exclusive, worldwide, non-transferable license to copy, print, publish, distribute, prepare derivative works of, and sell the 2017 OESC as part of the OESC/NEC. Nothing in this license grant shall be construed to prevent **BCD** from copying, distributing, publishing, printing, selling, transmitting, displaying, performing, preparing derivative works of, or licensing existing and future editions of the OESC that do not include the NEC or only include the NEC by reference.
- 1.c **Term.** The licenses set forth herein shall continue until May 1, 2021.

2. Derivative Works. Any other works that would be derivative works of the

NEC or the OESC/NEC may be prepared only with the express approval of NFPA.

3. Technical Services.

- 3.a Immediately after the execution of this Agreement, BNi shall commence the editorial, type-setting and printing services related to the development and publication of the OESC/NEC.
- 3.b BNi shall, in accordance with the specific formatting requirements and editorial and publication requirements set forth herein, print, publish and make available for sale to the State of Oregon, local governmental agencies, and to the general public, copies of the OESC/NEC in a bound format. The OESC/NEC shall be printed and published in a fully integrated format that incorporates Oregon amendments into a fully merged, contiguous and preassembled document. BNi must obtain **BCD's** prior approval, via page proof approval, of all portions of the OESC/NEC and OESC/NEC Supplements, as well as subsequent printings and editions of the OESC/NEC and OESC/NEC Supplements before printing and publishing.
- 3.c NFPA hereby agrees to provide a PDF version of the 2017 OESC/NEC for public access in the following manner; the PDF will be posted on the NFPA website as a read-only file using Real-Read software for access through a unique URL provided to **BCD**. The URL can be posted as deemed appropriate by the **BCD**.

- 4. **Sale of 2017 OESC.** BNi shall make the OESC/NEC available for sale to the State of Oregon, local governmental agencies, and the general public on or before January 15, 2018.
- 5. **Distribution of Free Copies.** BNi shall provide no copies of the OESC/NEC to employees of the BCD, except incidental copies necessary for review for compliance with this Agreement.
- 6. **Copyright:** The parties agree that copyright to the OESC and the OESC/NEC shall be held as follows:
 - 6.a The State of Oregon holds copyright in the OESC. The State of Oregon disclaims any copyright or other rights in material in the OESC taken from the 2017 or any other edition of the National Electrical Code, or other material developed by the NFPA.
 - 6.b The NFPA holds copyright in the *National Electrical Code* and shall hold copyright in the compilation that is the OESC/NEC. The NFPA disclaims any copyright or other rights in material in the OESC and any part of the OESC/NEC originally developed by the State of Oregon.

7. **Compensation.** In consideration of the license granted to **BCD** by BNi and the printing, publishing and other services provided to **BCD** by BNi, BNi shall not be required to pay any fees, royalties or other payments to **BCD**. In consideration of the opportunity provided to BNi by **BCD**, **BCD** shall not be required to pay any fees, royalties or other payments of any nature to BNi with respect to this Agreement or the licenses granted hereunder. In consideration of the opportunity provided to NFPA by **BCD**, **BCD** shall not be required to pay any fees, royalties or other payments of any nature to NFPA with respect to this Agreement or the licenses granted hereunder. In consideration of the opportunity provided to **BCD** by NFPA, NFPA shall not be required to pay any fees, royalties or other payments of any nature to **BCD** with respect to this Agreement or the licenses granted hereunder.

8. **Reservations.**

- 8.a BNi and NFPA reserve all rights in the Licensed Property which have not been expressly granted to **BCD** hereunder. Except as expressly provided herein, **BCD** shall not permit any third party to reproduce, sell and/or distribute the OESC/NEC, and **BCD** shall not itself reproduce, sell, and/or distribute the OESC/NEC except that **BCD** may purchase copies of the OESC/NEC from BNi or NFPA and resell the copies to the public.
- 8.b Any action which may be brought to obtain damages or to enjoin any third party from infringement of any copyright or proprietary right of NFPA and BNi with respect to the Licensed Property shall be brought exclusively by NFPA and BNi, in their sole discretion and at their sole cost and expense, using counsel of their own choosing. All damages or other relief or remedies resulting therefrom shall be owned solely by NFPA and BNi.
- 8.c **BCD** reserves all rights in the 2017 OESC which have not been expressly granted to BNi hereunder. Except as expressly provided herein, BNi shall not permit any third party to reproduce, sell and/or distribute the 2017 OESC. No license is granted to NFPA in this Agreement regarding the 2017 OESC.

9. **Representations or Warranties of the Parties.**

9.1 **Representations or Warranties of NFPA and BNi.** NFPA represents and warrants that it is the sole owner of the copyright rights in *NFPA 70®*, *National Electrical Code®*, 2017 edition. BNi represents and warrants that it has the right to enter into this Agreement and to grant the license granted to **BCD** hereunder. BNi also represents and warrants that it is the authorized agent and licensee of NFPA. NFPA and BNi make no representation, warranty or assurance to **BCD** with respect to the income, profits, cash flow, or expenses which may result from use of the Licensed Property.

9.2 **Representations or Warranties of BCD.** **BCD** represents and warrants that **BCD** has the full authority to enter into this Agreement and to grant the licenses granted to BNi hereunder, except to the extent the OESC/NEC contains material from the *National Electrical Code*.

10. Term and Termination.

- 10.a This Agreement shall be effective when fully executed and delivered by the Parties, or as of August 1, 2017, whichever is earlier, and shall continue thereafter, in accordance with section 1c above. The term of this Agreement may be extended by amendment to this Agreement, in which case, section 1c above shall also be extended.
- 10.b This Agreement may be terminated at any time in the event of a material breach or 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.c Upon termination of this Agreement by **BCD** after a material breach or default by BNi, all rights granted to BNi shall terminate and BNi shall discontinue further printing, publication, sales and distribution of the OESC/NEC, except BNi shall be entitled to sell its then existing inventory of the OESC/NEC. Further, **BCD** shall have a non-exclusive, non-transferable copyright license to copy, print, publish, distribute and sell the OESC/NEC for its own use and for sale to the public until BNi cures its material breach or default or 180 days after the parties publish and print an OESC/NEC edition subsequent to the 2017 edition, whichever occurs first, without compensating BNi.
- 10.d This Agreement, may also be terminated at any time after May 1, 2021 by any Party, with 180 days written notice to all other Parties. Upon termination under this subsection 10.d, all rights granted to BNi shall terminate and BNi shall discontinue further printing, publication, sales and distribution of the OESC/NEC, except BNi shall be entitled to sell its then existing inventory of the OESC/NEC. Further, **BCD** shall have a non-exclusive, non-transferable copyright license to copy, print, publish, distribute and sell the OESC/NEC for its own use and for sale to the public, in perpetuity.

11. Acknowledgments. The title page, and the cover, of all publications of the OESC/NEC shall bear the trademark of NFPA. The title page shall also acknowledge the trademarks of the NFPA in the title "National Electrical Code", in the acronym "NEC", and in the numerical designation "NFPA 70".

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

BNi: BNi Publications, Inc.
990 Park Center Drive, Suite E
Vista, CA 92081
Attention: William D. Mahoney, President & CEO
Email: billmahoney@bnibooks.com

BCD: Building Codes
Division PO Box
14470
1535 NW Edgewater Street
Salem, OR 97309-0404
Attention: Richard Rogers, Chief Building Official
Email: Richard.rogers@state.or.us

NFPA: National Fire Protection Association, Inc.
1 Batterymarch Park
P.O. Box 9101
Quincy, MA 02269-9101
Attention: Dennis Berry, Secretary of the
Corporation Email: dberry@nfpa.org

Any 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. Delivery shall be deemed complete on the date of actual delivery. Any Party may, at its option, provide delivery by regular U.S. mail, postage prepaid or electronic delivery; however, such electronic delivery shall not be effective to provide official legal action under this Agreement.

13. Relationship of Parties. BNi and NFPA shall act at all times as independent contractors and not as agents or employees of BCD. BNi and NFPA have no right or authority to incur or create any obligation for or legally bind BCD in any way. Although BCD reserves the right to evaluate the quality of the completed performance, BCD cannot and will not control the means or manner by which BNi and NFPA perform, except to the extent the means and manner are specifically set forth in this Agreement. BNi and NFPA are responsible for determining the appropriate means and manner of performing. BNi and NFPA acknowledge and agree that BNi and NFPA are not "officers", "employees", or "agents" of BCD (or any other agency, office, or department of the State of Oregon), as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. No Party shall make any statements, representations, or commitments of any kind or take any action binding on another Party except as provided for herein or authorized in writing by the Party to be bound.

14. Assignment. No Party may assign any right granted or obligation assumed hereunder except as provided in Paragraph 1 hereof without the prior written consent of the other Parties. Any 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. Nothing in this Agreement may be construed to permit any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

16. Contractors' National Labor Relations Board Certification. By signing this

Agreement, BNi certifies under penalty of perjury that there are no outstanding actions against it and no un-appealable judicial rulings resulting from BNi's failure to comply with an order of the National Labor Relations Board in the two calendar years preceding the date of the within Agreement.

17. Indemnity.

- 17.a NFPA and BNi shall indemnify and hold harmless BCD, the State of Oregon, and their officers, directors, employees, agents, affiliates, attorneys and their respective successors and assigns from and against any and all losses, claims, liabilities, obligations, judgments, damages, costs, awards, and expenses of any kind (including reasonable attorneys' fees), relating to, resulting from, or arising out of any claim by a third party that BCD's use of the Licensed Property constitutes an infringement of any copyright or other proprietary right of any such third party, or any act or omission by BNi or NFPA that constitutes a material breach of this Agreement, including any breach of warranty.
- 17.b At the request of **BCD**, BNi shall, at BNi's cost and expense, defend **BCD** with respect to claims based on the matters based on Paragraph 17.a, provided that **BCD** promptly tenders the defense to BNi and cooperates with BNi in the defense of any such claim.
- 17.c **BCD** shall reasonably cooperate in good faith, at BNi's reasonable expense, in the defense of a covered claim and BNi shall select counsel reasonably acceptable to the Oregon Attorney General to defend such claim and all costs of such counsel shall be borne by BNi. The Oregon Attorney General's acceptance of such counsel shall not be unreasonably withheld, conditioned or delayed. Counsel must accept appointment as a Special Assistant Attorney General under ORS Chapter 180 before such counsel may act in the name of, or represent the interests of, the State of Oregon, **BCD**, its officers, employees or agents. **BCD** may elect to assume its own defense with an attorney of its own choice and its own expense at any time **BCD** determines important governmental interests are at stake. **BCD** agrees to promptly provide BNi with notice of any claim that may result in an indemnification obligation hereunder. Subject to the limitations noted above, BNi may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of **BCD**, which consent shall not be unreasonably withheld, conditioned or delayed.
- 17.d The indemnity provisions of this Paragraph 17 hereof do not apply if **BCD** is in breach of this Agreement.
- 17.e **BCD** agrees that the State of Oregon having made revisions to and deletions from the 2017 NEC®, the NFPA and BNi shall not be responsible for any claims, losses, injuries, or damages arising from or related to any provisions of the OESC/NEC or OESC/NEC Supplements, and **BCD** shall not make any claim to the contrary

except those copyright or other proprietary rights noted above.

18. **Compliance with Laws.** BCD shall use the Licensed Property in strict compliance with the terms of this Agreement and all applicable federal, state, county and municipal laws, ordinances, statutes, rules and regulations.
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 required to effectuate and/or facilitate the purpose and intent of this Agreement.
20. **Entire Agreement.** This Agreement constitutes 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 with respect to such subject matter hereof. All prior agreements between the Parties or among the Parties and any third party or parties relating to the OESC/NEC, as well as the preparation of derivative works based upon the use of all or any part of the OESC/NEC for purposes of publishing, reproducing, printing, selling and distributing the OESC/NEC are expressly terminated.
21. Reserved.
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 of this Agreement 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 shall survive any expiration or termination of this Agreement.
24. **Waiver.** Any waiver at any time by any 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.** All Parties to this Agreement shall make, to the extent of their authority, best efforts to refrain from committing any act or taking any action which frustrates or hampers the rights of another 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 Oregon, without giving effect to the conflict of law principles thereof, and applicable federal law and any action or suit brought by the Parties relating to this Agreement shall be brought and conducted

solely and exclusively in the Circuit Court of Marion County for the State of Oregon in Salem, Oregon. BNi and NFPA hereby consent to the in personam jurisdiction of such courts, waive any objection to venue in such courts, and waive any claim that such forum is an inconvenient forum; provided, however, that if a claim must be brought in a federal forum, then it will be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. In no way will this Section or any other provision of this Agreement be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any Claim or from the jurisdiction of any court. BY EXECUTION OF THIS AGREEMENT, BNi and NFPA HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SUCH COURT.

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 an 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. **Confidential Information.** Subject to Section 31b, each Party shall make reasonable efforts to maintain the confidentiality of any Confidential Information received from another Party and shall not use such Confidential Information except in performing its obligations pursuant to this Agreement. For purposes of this section, "Confidential Information" means information marked or designated in writing by a Party as "confidential" prior to initial disclosure.
 - 31.a **Exceptions.** The confidentiality obligations imposed by section do not apply to: (a) information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by the recipient; (b) information subsequently and rightfully received from third parties who have the necessary rights to transfer said information without any obligation of confidentiality; (c) information that was known to the recipient prior to the Effective Date without obligation of confidentiality; (d) information that is independently developed by recipient and documented in writing without use of, or reference to, any Confidential Information of another Party; and (e) information required to be disclosed by compulsory judicial or administrative process or by law or regulation; provided that if a Party

is required to disclose Confidential Information under clause (e), that Party shall first give the other Party notice and shall provide such information as may reasonably be necessary to enable the other Party to take such action to protect its interests.

- 31.b Public Records Law. **BCD** may disclose Confidential Information to the extent disclosure is required by Oregon Public Records Laws, (ORS 192.410-192.505). If **BCD** receives from a third party any request under the Oregon Public Records Law for the disclosure of Contractor Confidential Information. **BCD** shall notify the Party whose Confidential Information is subject to the request within a reasonable period of time of the request. That Party is exclusively responsible for defending that party's position concerning the confidentiality of the requested information. **BCD** is not required to assist that Party in opposing disclosure of Confidential Information after and to the extent that the Oregon Attorney General orders **BCD** to disclose Confidential Information.

32. **Amendments.** The Agreement may be amended in writing only and such an Amendment must be fully executed by both Parties hereto before they become effective. Verbal agreements shall not be valid or enforceable. Emails with a typed name or signature block do not amount to a fully executed Amendment.


33. **Agreement Approvals.** This Agreement is exempt from advertising or competitive bidding. In addition, per Paragraph 6 no fees, royalties or other payments of any nature shall be required to be paid by **BCD** to NFPA or BNI with respect to this Agreement or the license granted hereunder.

Signatures. The Parties, having carefully read this Agreement and having consulted (or having been given an opportunity to consult) with 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 for whom it purports to sign.

State of Oregon, by and through its *Building Codes Division*

By: 
Richard Rogers, Chief Building Officer

8/31/17
Date

By: 
Chris Huntington, Deputy Administrator

8/31/17
Date

By: Nancy A. Cody
Nancy A. Cody, Designated Procurement Officer

9/15/17
Date

BNI Publications, Inc.

By: _____
William D. Mahoney, President & CEO

Date

National Fire Protection Association, Inc.


By: _____
Kimberly A. Fontes, Division Director,
Product Development

Date

Nancy A. Cody, Designated Procurement Officer

Date

BNi Publications, Inc.

By: 
William D. Mahoney, President & CEO


Date

National Fire Protection Association, Inc.

By: 
Kimberly A. Fontes, Division Director,
Product Development


Date

EXHIBIT 2



DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-6002

December 22, 2023

VIA E-MAIL ONLY: carl@media.org

Carl Malamud
Public.Resource.Org
95 Kennedy Lane
Healdsburg, CA 95448

Re: Petition for Public Records Disclosure Order
Building Codes Division, Oregon Department of Consumer and Business Services
Oregon State Fire Marshall
DOJ File Nos.: 440918-GA0188-23 and 260001-GA0190-23

Dear Mr. Malamud:

This letter is the Attorney General's response to two petitions filed by you, on behalf of Public.Resource.Org, for the disclosure of records under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petitions ask the Attorney General to order the Building Codes Division of the Department of Consumer and Business Services (BCD) and Oregon State Fire Marshall (OSFM) to disclose "digital copies * * * of the entire" Oregon Electrical, Plumbing, Structural, Mechanical, and Residential Specialty Codes (the "building codes"), as well as the Oregon Fire Code.

We discussed your petitions with BCD and OSFM. They explained that the official versions of the Oregon building and fire codes are codified in OAR Chapters 918 and 837, respectively. Those rules are freely available for the public to download from the Oregon Secretary of State's website.¹ However, they noted, your requests for "digital copies * * * of the entire" codes appear to be seeking instead privately compiled versions of the codes that differ from the official rules. Specifically, the official rules do not contain the entire text of provisions from model specialty codes that are incorporated into the rules only by reference,² whereas the

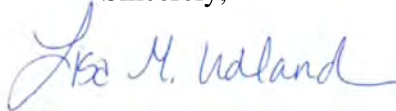
¹ See The Oregon Administrative Rules Compilation for 2023, *available at* <https://secure.sos.state.or.us/oard/displayCompilation.action?compRsn=121> (accessed December 21, 2023).

² See, e.g., OAR 837-040-00010(2) ("[T]he 2022 Oregon Fire Code which is the 2021 edition of the International Fire Code, as published by the International Code Council, and as amended by the Department of the State Fire Marshal, is adopted.").

privately published versions include the text of official rules along with the full text of the incorporated model specialty codes. However, according to BCD and OSFM, neither agency publishes nor possesses such integrated digital versions of the codes.³

Under the circumstances, we are not able to grant your petitions because neither BCD nor OSFM maintain the digital records you are seeking. We therefore respectfully deny your petitions.

Sincerely,



LISA M. UDLAND
Deputy Attorney General

ACF/pjn
cc via e-mail only: Todd Smith (BCD)
Chad Hawkins (OSFM)

³ BCD and OSFM inform us that the model specialty codes are developed and copyrighted by various specialty code-making organizations, and that many of those organizations do publish integrated, but unofficial versions of five of the Oregon specialty codes you have requested. BCD and OSFM maintain physical copies of those integrated versions in their offices for inspection, but they inform us that neither agency possesses digital copies of those unofficial versions.

EXHIBIT 3



DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-6002

March 14, 2024

VIA E-MAIL ONLY: ohollarenr@lanepowell.com

Ryan O'Hollaren
Lane Powell
601 SW Second Ave, Ste 2100
Portland, OR 97204

Re: Request for Reconsideration - Petition for Public Records Disclosure Order
Building Codes Division, Oregon Department of Consumer and Business Services
Oregon State Fire Marshall
DOJ File Nos.: 440918-GA0188-23 and 260001-GA0190-23

Dear Mr. O'Hollaren:

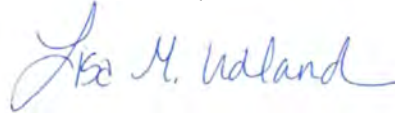
This responds to your February 21, 2024 letter requesting that this office reexamine its order responding to a recent public records petition submitted by your client, Carl Malamud. *See* Public Records Order, December 22, 2023, Malamud.

Mr. Malamud's petition sought an order compelling the Building Codes Division of the Department of Consumer and Business Services (BCD) and Oregon State Fire Marshall (OSFM) to disclose integrated "digital copies" of various Oregon building codes. We understand Mr. Malamud to be seeking unofficial digital versions of the building codes that are published by, and available for purchase from, various private entities that develop model specialty codes. Mr. Malamud's petition was denied because BCD and OSFM informed us that they have not purchased and do not otherwise possess the unofficial digital versions of the integrated codes he requested. Your letter asserts that the contracts with the publishers of the unofficial digital versions of the integrated codes give BCD and OSFM at least constructive possession of the digital versions.

We have reviewed the underlying contracts and conclude that they do not give BCD or OSFM constructive possession or an ownership interest in the unofficial *digital* versions of the

documents Mr. Malamud seeks.¹ And because both agencies report that they do not actually possess the unofficial digital versions of those integrated codes, we cannot conclude that either is a custodian of the unofficial digital versions within the meaning of the Public Records Law. *See* ORS 192.311 (defining “custodian” in relevant part as a “public body mandated, directly or indirectly, to create, maintain, care for or control a public record.”). As noted in our initial order, both BCD and OSFM maintain hard copy versions of the unofficial integrated codes that are available for public inspection. *See* ORS 192.324(3) (“If the public record is not available in the form requested, the public body shall make the public record available in the form in which the public body maintains the public record.”)

Sincerely,



LISA M. UDLAND
Deputy Attorney General

ACF/pjn

¹ You argue that Section 11 of the Terms and Conditions of those contracts gives BCD and OSFM the right to request copies and to reproduce the digital versions of the integrated building codes. We do not interpret Section 11 to apply to the integrated building codes at all, regardless of format, because that section only applies to contractor “accounting records * * * and any other records relating to [c]ontractor’s performance * * *.” And even if Section 11 were interpreted to encompass the digital versions of the unofficial integrated codes, we do not believe the right to “access” contractor performance records under that section, in itself, makes the digital versions “public records” or constitutes a constructive ownership interest in the digital versions within the meaning of the Oregon Public Records Law. *See Attorney General’s Public Records and Meetings Manual* at 8 (2019) (citing Public Records Order, March 23, 2005, Har (contractual right to access contractor records is not sufficient by itself to qualify records as “public records,” nor does it amount to an “ownership” interest in such records)).