

Amendment No. 2
Whatcom County Contract No. 202211017
CONTRACT BETWEEN WHATCOM COUNTY AND
Code Publishing, LLC a General Code Company

THIS AMENDMENT is to the Contract between Whatcom County and Code Publishing, LLC (a General Code Company), dated November 25, 2024 and designated "Whatcom County Contract No. 202211017-2". In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment extends the term of this Agreement through December 31, 2025, and increases the maximum consideration by \$ 15,000 to a total consideration of \$ 45,000.

This Amendment replaces/revises the following contract sections as follows:

0.2 Party Responsibilities:

The County shall be responsible for the correctness and accuracy of the information it supplies to the Contractor ("County Content"). By acquiring an online hosted code, the County hereby requests that County Content be posted online, and the County will be responsible for the presentation, accuracy and completeness of the County Content provided, and the Contractor will be entitled to post that County Content without review or editing. Further, the County is responsible for providing the Contractor with timely decisions and answers to questions raised by the Contractor, for inclusion of sufficient funds in the budget to pay the Contractor for services, and for the prompt payment of invoices. The County shall also be responsible for completing its work in accordance with the "Performance Schedule." Contractor shall not be responsible or liable for any delay or failure of performance caused in whole or in part by County's delay in performing, or failure to perform, any of its obligations under this Agreement, which shall include providing responsive information to Contractor necessary for Contractor's timely performance hereunder.

The County shall identify, and name, an appropriate individual, with corresponding contact information, including electronic mail address, as the "Primary Contact" with whom the Contractor should communicate matters regarding the online code, such as maintenance notifications, and who has the authority to make requests including release of County data, both internally to the Contractor and to the County, restoration of data, and other configuration changes.

11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County. Upon termination for convenience, Code Publishing, LLC (a General Code Company) shall be entitled to payment for actual work performed at unit contract prices for completed items of work, as well as reasonable compensation for partially completed work and any incurred out-of-pocket expenses related to the terminated work.

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County. Code Publishing, LLC (a General Code Company) may, without the other party's consent, transfer this agreement or any of its rights and obligations under this Agreement to any of its affiliated entities, including but not limited to International Code Council, Inc., General Code Enterprises, LLC, ICC Codification, Inc., American Legal Publishing, LLC, and/or American Legal Publishing Corporation.

31.1 Ownership of Items Produced and Public Records Act:

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Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the

Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement. Code Publishing, LLC (a General Code Company) retains ownership of all proprietary software, systems, and intellectual property used in the delivery of services under this contract. The County is granted a non-exclusive, royalty-free license to use any deliverables created specifically for the County during the term of this agreement.

~~31.2 Patent/Copyright Infringement: Not Applicable~~

31.2 Software Ownership and License:

a. Definitions:

(i) "Licensed Program" shall mean the Contractor software product eCode360® and any other software product provided to the County by the Contractor or its affiliates or licensors pursuant to the Proposal.

(ii) "Update" means a new release of the Licensed Software made available by the Contractor to its customers, containing bug fixes and minor modifications or enhancements, but not a new version containing significant new features, as determined by the Contractor in its sole discretion.

(iii) "Use" shall mean accessing, downloading, copying or duplication of any portion of a Licensed Program from the Internet, storage units or media for processing or the utilization of the Licensed Program for its intended purpose.

b. License Grant

The Contractor hereby grants the County a non-exclusive, non-transferable, non-licensable, non-assignable license to Use the Licensed Program.

c. Proprietary Rights; Restrictions:

(i) The Licensed Program provided by the Contractor is proprietary and owned by the Contractor and/or its affiliates and licensors. The County acknowledges that the Licensed Program is licensed, not sold, and agrees to respect all proprietary rights associated with it. The County shall use the Licensed Program solely as permitted by this Agreement and shall not decompile, disassemble, reverse engineer, sublicense, sell, distribute, rent, or disclose the Licensed Program in any form without the express written permission of the Contractor.

(ii) The County shall not use the Licensed Program to infringe on any third party's intellectual property rights or violate any applicable laws or regulations. Furthermore, the County shall not use the Licensed Program for any actions that are defamatory, trade libelous, threatening, harassing, or obscene. Upon the County's request, the Contractor shall promptly deliver all materials related to the Licensed Program, including source code, upgrades, modifications, and other related documents or materials developed solely for and paid for by the County to perform the Work.

(iii) The County will retain all rights, including copyrights, and title to the text of its municipal code (the "Code") but hereby grants to the Contractor the right and license to use, reproduce, adapt, distribute, display and advertise the Code, and to digitize the Code and to prepare, reproduce, publish, distribute, transmit, perform, display, broadcast, upload, download, communicate to the public, lend or otherwise transfer or make available or store in any medium a copy of the Code whether or not adapted or abridged on its own or in combination with any other work by means of or through any electronic medium, including, digital, optical and magnetic information storage and retrieval platforms or systems, on-line, electronic or other reproduction, transmission or publication, or by any other means whether now known or subsequently developed.

(iv) All computer software and other intellectual property of the Contractor used in performing its services shall remain the property of the Contractor and/or its affiliates and/or licensors. Model building codes and/or other model codes used by the Contractor in the Licensed Program or otherwise in performing its services shall remain the property of the Contractor and/or its affiliates, and no ownership or other proprietary right in those model codes is conveyed in the County.

34.3 Defense & Indemnity Agreement.

To the extent of its comparative liability, each Party agrees to indemnify, defend and hold the other Party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of the Party, its elected and appointed officials, employees, agents or volunteers.

A Party shall not be required to indemnify, defend, or hold the other Party harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other Party.

In the event of any concurrent act or omission of the Parties, negligent or otherwise, these indemnity provisions shall be valid and enforceable only to the extent of each Party's comparative liability.

The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the Parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.

If mutual indemnification language is used and includes a "waiver" of immunity under the Washington State Industrial Insurance Act, RCW Title 51 or other workmen's compensation, disability or benefit acts, the following language should be used to maintain basic workmen's compensation protection for the County:

The indemnification obligations of the Parties shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act. Each Party hereby expressly waives any immunity afforded by such acts to the extent required by a Party's obligations to indemnify, defend and hold harmless the other Party or Parties. A Party's waiver of immunity does not extend to claims made by its employees directly against the Party as employer. The foregoing indemnification obligations of the Parties are a material inducement to enter into this Agreement and have been mutually negotiated.

37.1 Administration of Contract:

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The Administrative Officer for purposes of this agreement is:

~~Cathy Halka~~~~Dana Brown-Davis~~, Clerk of the Council
Whatcom County Council Office
311 Grand Avenue, Suite 105
Bellingham, WA 98225
ChalkaDBrown@co.whatcom.wa.us

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

~~Margaret Bustion, President~~
~~Code Publishing, LLC (a General Code Company)~~
~~6558 19th Ave. NE~~
~~Seattle, WA 98115~~
~~mbustion@codepublishing.com~~
~~cpc@codepublishing.com~~
Cristina LoVerde
Code Publishing, LLC (a General Code Company)
781 Elmgrove Road
Rochester, NY 14624
cloverde@generalcode.com

40.02 Warranties; Disclaimer; Limitation of Liability

The Contractor warrants that the services and any deliverables provided hereunder will be in accordance with the terms and conditions of this Agreement and the "Performance Schedule," and will be free of material defects. The Contractor warrants that the Licensed Program, as defined herein, will perform substantially in accordance with the accompanying written materials for a period of one year from the date of receipt. Regardless of the County's acceptance of completed materials when delivered, the Contractor shall correct errors found either by the County or the Contractor.

The Contractor's warranties contemplated herein do not extend to failures arising out of (i) incorrect or insufficient data, specifications or instructions provided by the County or (ii) work or services performed by others. Except as expressly stated herein, THE CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO ANY SERVICES, LICENSED PROGRAM AND/OR RELATED MATERIALS TO BE FURNISHED BY THE CONTRACTOR.

The cumulative liability of the Contractor and its licensors for all obligations, warranties and guaranties, whether express or implied, with respect to services performed and software licensed hereunder shall be limited to the amount paid to the Contractor pursuant to this Agreement. The Contractor, and its licensors shall not be liable to the County or any other person or entity for lost profits, revenues, use, opportunities, or data, or any indirect, special, incidental, punitive or consequential damages arising from the performance or nonperformance of services or the use or inability to use any software or product. The limitations and protections against liability afforded the Contractor, and its licensors herein shall apply to any action or claim in connection with the services, whether based on contract, tort, statute or otherwise (including but not limited to negligence, warranty and strict liability).

42.1.d Disputes:

d. Arbitration: ~~Not Applicable~~ Any disputes arising under this agreement shall first be subject to mediation. If mediation fails, the parties agree to submit to binding arbitration in a mutually agreed-upon location.

Unless specifically amended by this agreement, all other terms and conditions of the original contract shall remain in full force and effect.

This Amendment takes effect: January 1, 2025, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and Code Publishing, LLC a General Code Company have executed this Amendment on the date and year below written.

DATED this _____ day of December, 2024.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

CONTRACTOR:

GENERAL CODE LLC

CRISTINA LOVERDE, VICE PRESIDENT, CLIENT ENGAGEMENT

CONTRACTOR

Code Publishing, LLC, a General Code Company

781 Elmgrove Road
Rochester, NY, 14625

Contact Name: Cristina LoVerde, Vice President
Contact Phone: 800.836.8834

Contact FAX:
Contact Email: cloverde@generalcode.com

WHATCOM COUNTY:

Recommended for Approval:

Department Supervisor Date

Approved as to form:

Kellen Kooistra by email 11/25/24

Prosecuting Attorney Date

Approved:

Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive