



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Date of Award:

DEC 21 2020

enCode Plus, LLC
1415 Highway 6 South, Suite A300
Sugar Land, TX 77478

Attention: Bret Keast, CEO

Reference: enCode Plus for zMOD

Acceptance Agreement

Contract Number: 4400010271

This Acceptance Agreement signifies a contract award for a Software as a Service platform for online publishing of the Zoning Ordinance as part of the Zoning Ordinance Modernization Program (zMod), for Fairfax County. The period of the contract shall be from Date of Award through December 31, 2025, with no renewal options available.

The contract award shall be in accordance with:

1. This Acceptance Agreement, and
2. Contract 4400010271 attached hereto.

Please note that this is not an order to proceed. A Purchase Order constituting your notice to proceed will be issued to your firm. Please provide your Insurance Certificate, according to Section 12 of the contract, within 10 days after receipt of this letter. All questions regarding this contract shall be directed to the Contract Specialist, Penny Crawley, at 703-324-3884 or via e-mail at penny.crawley@fairfaxcounty.gov.

DocuSigned by:

Cathy A. Muse

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Cathy A. Muse, CPPO
Director/County Purchasing Agent

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DS
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Department of Procurement & Material Management
12000 Government Center Parkway, Suite 427
Fairfax, VA 22035-0013
Website: www.fairfaxcounty.gov/procurement
Phone 703-324-3201, **TTY:** 711, **Fax:** 703-324-3228

THE PARTIES TO THIS CONTRACT, Fairfax County ("Fairfax County" or "the County") AND enCodePlus, Inc. ("Contractor"), MUTUALLY AGREE THAT:

1. FAIRFAX COUNTY engages the Contractor to provide the following goods and/or services:
 - 1.1. Software as a service platform for online publishing of the Zoning Ordinance as part of the Zoning Ordinance Modernization Program (zMod), in accordance with Appendix A, the End User License Agreement with pricing.
2. PERIOD OF CONTRACT:
 - 2.1. The period of this contract shall be from the Date of Award through December 31, 2025, with no renewal options. The Contractor agrees that prices shall remain firm for one year.
3. COMPENSATION:
 - 3.1. Fairfax County agrees to pay the Contractor rates and fees as outlined in Table 1, Payment Schedule, of Appendix A. As the Contractor is not a bonafide County employee the parties agree that no deductions for withholding taxes, workman's compensation, insurance, or other fringe benefits will be made and will be the sole responsibility of the Contractor.
 - 3.2. Changes in cost for any subsequent contract years may be based on the Consumer Price Index (CPI-U), or other relevant indices but shall not exceed three (3) percent. The request for a change will include as a minimum (1) the cause for this adjustment; (2) proposed effective date; and (3) the amount of the change requested with documentation to support the requested adjustment (i.e. appropriate Bureau of Labor Statistics, Consumer Price Index (CPI-U), change in manufacturer's price, etc.). Increases are not guaranteed but will be granted at the discretion of the Purchasing Agent.
4. AUTHORITY:
 - 4.1. The Purchasing Agent has the sole responsibility and authority for purchasing supplies, materials, equipment, and services, except as excluded in the Fairfax County Purchasing Resolution. The Purchasing Agent's responsibility and authority includes, but is not limited to, issuing and modifying solicitations, negotiating and executing contracts, and placing purchase orders. In discharging these responsibilities, the Purchasing Agent may be assisted by contract specialists. Unless specifically delegated by the Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for an indebtedness. Any purchase ordered or contract made that is contrary to these provisions and authorities shall be of no effect, void, and does not bind the County.

The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this contract is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.
5. DEFINITIONS: Unless otherwise defined in this contract, capitalized terms shall have the meanings defined by the Fairfax County Purchasing Resolution.

6. INTERPRETATION OF CONTRACT:

6.1. Any questions pertaining to this contract shall be directed to:

Penny Crawley, Contract Specialist
Department of Procurement & Material Management
12000 Government Center Parkway, Suite 427
Fairfax, Virginia 22035-0014
Telephone Number: (703) 324-3884
E-mail: penny.crawley@fairfaxcounty.gov

7. METHOD OF ORDERING: As requirements arise, authorized individuals may place orders for specific quantities of items covered in this contract. Regardless of the method of ordering used, the contract and any subsequent modifications determine performance time and dates. Performance under this contract is not to begin until receipt of the purchase order, Procurement Card order, or other notification to proceed by the County Purchasing Agent and/or County agency to proceed.

8. INSPECTION AND ACCEPTANCE: Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within 20 business days per deliverable. The County reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

9. BILLING: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted for each purchase order immediately upon completion of the services. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

10. PAYMENT:

10.1. Payment shall be made after satisfactory performance that is in accordance with all provisions of the contract, and upon receipt of a properly completed invoice. The County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any subsequent modifications.

10.2. Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.

10.3. When equipment requires installation (which includes erection, setting up or placing in position, service, or use) and testing, and the installation or testing is delayed, payment may be made on the basis of 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

11. TAX EXEMPTION: The County is exempt from the payment of any federal excise or any Virginia sales tax. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K.

12. CONTRACT INSURANCE PROVISIONS:

12.1. The Contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract.

- 12.2. The Contractor shall, during the continuance of all work under the contract provide the following:
- a. Maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
 - b. The Contractor agrees to maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Contractor, its subcontractors, and the interest of the County, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the contract or in connection with the contracted work.
 - c. The Contractor agrees to maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
 - d. Contractor agrees to maintain Contractors Liability insurance in the amount of \$1,000,000.00 per occurrence/aggregate to insure against loss due to liability imposed upon an owner/contractor for acts arising out of the operations of independent contractors/subcontractors or out of an owner's/contractor's supervisory activity.
 - e. Liability Insurance "Claims Made" basis:

If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:
 1. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the contractor's or sub-contractor's work under this contract, or
 2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
 - f. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
 - g. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
 - h. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the Contractor's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A:VI or better.
 - i. The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein.

- j. The Contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to the County on demand.
- k. The Contractor will provide on demand certified copies of all insurance policies related to the contract within ten business days of demand by the County. These certified copies will be sent to the County from the Contractor's insurance agent or representative.
- 12.3. No change, cancellation, or non-renewal shall be made in any insurance coverage without a 45-day written notice to the County. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
- 12.4. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities provisions of the contract.
- 12.5. Contractual and other liability insurance provided under this contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
- 12.6. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the County. The Contractor shall be as fully responsible to the County for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of person directly employed by it.
- 12.7. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
- 12.8. The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-596, as it may apply to this contract.
- 12.9. The County, its officers and employees shall be named as an "additional insured" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the County may possess."

13. INDEMNIFICATION:

- 13.1. **General Indemnification.** Contractor must indemnify, keep and save harmless, and defend the County, its agents, officials, employees and volunteers against Claims that may accrue or arise against the County as a result of the granting a contract, if the Claim was caused by the negligence or error, or omission of the Contractor, its employees, its subcontractor, or its subcontractor's employees. As used in this Section, a Claim includes: injuries, death, damage to property, breach of data security, suits, liabilities, judgments, or costs and expenses. Upon request by the County, the Contractor must at its own expense: appear, defend, and pay all attorney's fees and all costs and other expenses related to the Claim. If, related to a Claim, any judgment is rendered against the County or a settlement reached that requires the County to pay money, the Contractor must at its own expense satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor, does not limit the Contractor's responsibility to indemnify, keep and save harmless, and defend the County as provided in this Contract.
- 13.2. **Intellectual Property Indemnification.** In addition to the General Indemnification, Contractor will indemnify the County for and defend the County against third-party claims for infringement of any valid United States patent, trademark or copyright by the Contractor's products, software, services, or deliverables. Contractor must indemnify the County for any loss, damage, expense or liability, including costs and reasonable attorney's fees that may result by reason of any such claim.

In the event of a claim covered by this subparagraph, and in addition to all other obligations of Contractor in this Paragraph, Contractor must at its expense and within a reasonable time: (a) obtain a right for the County to continue using such products and software, or allow Contractor to continue performing the Services; (b) modify such products, software, services or deliverables to make them non-infringing; or (c) replace such products or software with a non-infringing equivalent. If, in the Contractor's reasonable opinion, none of the foregoing options is feasible Contractor must immediately notify the County and accept the return of the products, software, services, or deliverables, along with any other components rendered unusable as a result of the infringement or claimed infringement, and refund to the County the price paid to Contractor for such components as well as any pre-paid fees for the allegedly infringing services, including license, subscription fees, or both. Nothing in this paragraph, however, relieves the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract related to a third-party infringement claim.

- 13.3. Right to Participate in Defense. The County may, at its sole expense, participate in the defense or resolution of a Claim. Contractor will have primary control of the defense and resolution of the Claim, except when such defense or resolution requires the County to (i) admit liability or wrongdoing; or (ii) to pay money. In either of these cases Contractor must obtain the County's prior written consent before entering into such settlement or resolution.
- 13.4. No Indemnification by the County. The parties agree that under applicable law the County cannot indemnify or defend the Contractor. To the extent any promise or term contained in this Contract, including any exhibits, attachments, or other documents incorporated by reference therein, includes an indemnification or obligation to defend by the County, that promise or term is stricken from this Contract and of no effect.
14. **CONTRACT ALTERATIONS:** No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or her authorized agent.
15. **CHANGES:** If in the Purchasing Agent's opinion, it becomes proper or necessary in the execution of this contract to make any change in design, or to make any alterations that will increase the expense, the Purchasing Agent shall determine an equitable adjustment to the Contractor's compensation. No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor are first expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.
16. **SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS:** It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign its right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from its obligations or change the terms of the contract.
17. **TERMINATION OF CONTRACTS-**Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:
- 17.1. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.
- 17.2. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.

18. **TERMINATION FOR CONVENIENCE**-A contract may be terminated in whole or in part by the County in accordance with this clause whenever the Purchasing Agent determines that such a termination is in the best interest of the County. Any such termination shall be affected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.
19. **TERMINATION OF CONTRACT FOR CAUSE**-
 - 19.1. If, through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under this contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, the County shall have the right to terminate the contract. Any such termination shall be affected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
 - 19.2. Termination of the Contract for Cause does not relieve the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.
20. **Effect of Termination; Data Retention.** Upon termination or expiration of this Agreement, the Contractor and the County shall comply with the requirements and obligations of this Subsection.
 - 20.1. Subject to the continuing rights, licenses, and obligations of either Contractor or County under this agreement, all authorizations and licenses granted under this Agreement will immediately terminate.
 - 20.2. The County shall cease all use of the expired or terminated Software, and Contractor shall cease all use of County Data.
 - 20.3. The County shall pay to Contractor all undisputed charges and amounts due and payable to Contractor, if any, for use of the Licensed Technology and Services performed under the terminated or expired Agreement.
 - 20.4. Contractor shall repay, on a pro rata basis, all fees, expenses, and other amounts paid in advance for any services that the Contractor has not performed as of the effective date of such expiration or termination.
 - 20.5. Contractor shall, upon the County's written request, promptly destroy and erase from all systems it directly or indirectly uses or controls, all originals and copies of all of the County's Data. County has full, unlimited access to County's Data through its password-protected maintenance module, allowing County to export the data to Microsoft Word and Adobe PDF. Also, the County may save the document in HTML format or as a web archive file. County is advised to keep backups of its data.
 - 20.6. In lieu of destroying and erasing County's Data, for Contractor's then-current technical support rate, Contractor may offer export services to convert content into other file formats and deliver them to Contractor electronically or on optical or other solid-state media.
21. **GUARANTIES & WARRANTIES:** All guarantees and warranties required shall be furnished by the contractor and shall be delivered to the Purchasing Agent before final payment on the contract is made. Unless in conflict with this contract or as otherwise stated, manufacturer's standard warranty applies.
22. **GENERAL GUARANTY:** Contractor agrees to:
 - a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.

- b. Warrant that when the contract includes a software license, or use of licensed software, the Contractor is the owner of the Software or otherwise has the right to grant to the County the license to use the Software granted through the Contract without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
- c. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- d. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
- e. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, regulations, and policies of the County.
- f. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.

23. SERVICE CONTRACT GUARANTY: Contractor agrees to:

- a. Furnish services described in the contract at the times and places and in the manner and subject to conditions of those documents provided that the County may reduce the said services at any time.
- b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
- c. All work and services rendered in strict conformance to all laws, statues, and ordinances and the applicable government rules, regulations, methods, and procedures.
- d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. The County is under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.

Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

24. OFFICIALS NOT TO BENEFIT:

- 24.1. Contractor shall certify, upon signing a contract, that to the best of their knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of their immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
- 24.2. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "24.1." has been or will be received in connection with a contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- 24.3. In the event the Contractor has knowledge of benefits as outlined above, this information should be submitted with the contract. If the above does not apply at time of award of contract and becomes known after inception of a contract, the Contractor shall address the disclosure of such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013.

25. LICENSE REQUIREMENT: All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business,

Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: <https://www.fairfaxcounty.gov/taxes/business/understanding-bpol-tax>.

26. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
27. **COVENANT AGAINST CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
28. **SUPPLIER DIVERSITY:**
 - 28.1. In connection with the performance of this contract, the Contractor agrees to use his or her best effort to carry out this policy and to insure that small and minority businesses shall have the maximum practicable opportunity to compete for subcontract work under this contract consistent with the efficient performance of this contract. Contractors may rely on oral or written representations by subcontractors regarding their status as small and/or minority business enterprises in lieu of independent investigation.
 - 28.2. Where Federal grants or monies are involved, it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as they pertain to small and minority business use.
29. **INELIGIBILITY:** Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent, in accordance with Article 5, Section 1 of the Fairfax County Purchasing Resolution.
30. **ORDER OF PRECEDENCE:** In the event of conflict, the provisions of this contract shall take precedence over any other contract document.
31. **DELAYS AND SUSPENSIONS:**
 - 31.1. The County may direct the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time deemed appropriate for the convenience of the County. The County will extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.
 - 31.2. If the County does not direct the Contractor, in writing, to suspend, delay, or interrupt the contract, the Contractor must give the County Purchasing Agent written notice if Fairfax County fails to

provide data or services that are required for contract completion by the Contractor. The County may extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.

- 31.3. The Contractor shall continue its work on other phases of the project or contract, if in the sole discretion of the Purchasing Agent such work is not impacted by the County's delay, suspension, or interruption. All changes to the work plan or project milestones shall be reflected in writing as a contract amendment.

32. CONTRACTUAL DISPUTES:

- 32.1. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the Purchasing Agent, who shall reduce her decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the Purchasing Agent's decision on the claim, unless the Purchasing Agent fails to render such decision within the time specified.

- 32.2. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

33. **LEGAL ACTION-** No Contractor shall institute any legal action until all statutory requirements have been met.

34. **VENUE:** This contract and its terms, including but not limited to, the parties' obligations, the performance due, and the remedies available to each party, are governed, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflicts of laws, rules, or provisions that would cause the application of any laws other than those of the Commonwealth of Virginia do not apply. Any and all disputes, claims, and causes of action arising out of or in any way connected with this contract or its performance must be brought in the applicable court of Fairfax County, or in the United States District Court for the Eastern District of Virginia, Alexandria Division.

35. **COMPLIANCE WITH FEDERAL, STATE, AND COUNTY LAWS:** The Contractor will comply with all applicable federal and state laws and with all County ordinances and requirements.

36. NON-DISCRIMINATION:

- 36.1. During the performance of this contract, the Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor, in accordance with Article 2, Section 4.C of the Fairfax County Purchasing Resolution, as amended.

- 36.2. Fairfax County does not discriminate against faith-based organizations, in accordance with the Code of Virginia, § 2.2-4343.1, or against a Contractor because of race, religion, color, sex,

national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

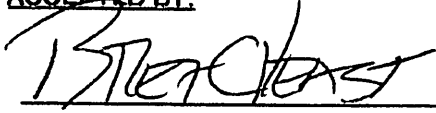
37. **DRUG FREE WORKPLACE:** During the performance of a contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a Contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
38. **AMERICANS WITH DISABILITIES ACT REQUIREMENTS:** Fairfax County Government is fully committed to the federal Americans with Disabilities Act (ADA), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Fairfax County government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment. Acceptance of this contract by the Contractor acknowledges the Contractor's commitment and compliance with ADA.
39. **IMMIGRATION REFORM AND CONTROL ACT:** Contractor agrees that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth; knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
40. **VIRGINIA FREEDOM OF INFORMATION ACT-**All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:
 - 40.1. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
 - 40.2. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "41.3" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 - 40.3. Trade secrets or proprietary information submitted by a bidder, offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

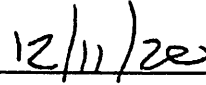
- 40.4. Nothing contained in this section shall be construed to require the County, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.
 - 40.5. The County cannot maintain as confidential any information, data, or records obtainable through the Virginia Freedom of Information or similar law. This includes records or information that have not been properly designated as trade secret or proprietary information pursuant to Va. Code Ann. § 2.2-4342(F).
 - 40.6. A bidder or offeror shall not designate as trade secrets or proprietary information (a) an entire bid, proposal, or prequalification application; (b) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (c) line item prices or total bid, proposal, or prequalification application prices.
41. **AUDIT OF RECORDS-** The parties agree that the County or its agent must have reasonable access to and the right to examine any records of the contractor involving transactions related to the contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor shall include these same provisions in all related subcontracts. For purposes of this clause, the term "records" includes documents, and papers regardless of whether they are in written form, electronic form, or any other form.
42. **NONVISUAL ACCESS-**All information technology, which is purchased or upgraded by the County under this contract, must comply with the following access standards from the date of purchase or upgrade until the expiration of the Contract:
- a. Effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;
 - b. The technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;
 - c. Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and
 - d. The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.
 - e. Compliance with the nonvisual access standards set out this Section is not required if the Purchasing Agent determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

Contract Number 4400010271

43. **PROHIBITION ON THE USE OF CERTAIN PRODUCTS AND SERVICES:** Fairfax County may not use, whether directly or through work with or on behalf of another public body, any hardware, software, or services that have been prohibited by the U.S. Department of Homeland Security for use on federal systems.

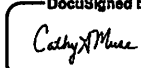
ACCEPTED BY:





CONTRACTOR

DocuSigned by:



Cathy A. Muse, CPPO
Director/County Purchasing Agent

Date

12/18/2020

Date

BUSINESS CLASSIFICATION SCHEDULE

PLEASE CLASSIFY YOUR BUSINESS/ORGANIZATION BY MARKING IN STEP 1. STEP 2 IS OPTIONAL. This designation is requested of all business/organizations including publicly traded corporations, non-profits, sheltered workshops, government organizations, partnerships, sole proprietorships, etc. Fairfax County does not certify business classifications, nor does it establish preferences or set-asides for specific classifications.

Examples:

- A small Asian women-owned business would mark "Small" in Step 1, then "Women-Owned" and "Minority-Owned" in Step 2
- A small, service-disabled veteran and women-owned business would mark "Small" in Step 1, then "Women-Owned" and "Service-Disabled Veteran-Owned" in Step 2
- A government agency/public body would ONLY mark "Government Agency/Public Body" in Step 1

NAME OF BUSINESS: enCode Plus, LLC.

LAST 4 DIGITS OF TIN/EIN: 6421 **SIGNATURE:** *BRACIBAST*

<p><u>Step 1: Please indicate the classification of your business/organization. Select ONLY one (1)</u></p> <p><input checked="" type="checkbox"/> Small <input type="checkbox"/> Large <input type="checkbox"/> Non-Profit <input type="checkbox"/> Government Agency/Public Body <input type="checkbox"/> Shelter Workshop</p> <p><u>Step 2 (OPTIONAL): Please indicate what type of ownership your business/organization consists of. You may choose MORE than one (1) option.</u></p> <p><input checked="" type="checkbox"/> Women-Owned <input type="checkbox"/> Minority-Owned <input type="checkbox"/> Service-Disabled Veteran-Owned</p>
--

DEFINITIONS

Small Business/Organization - "Small business" means a business that is at least 51% independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of these individual owners shall control both the management and daily business operations of the small business.

Minority Business - is a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company, or other entity, at least 51% of the equity ownership interest in the corporation, partnership or limited company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals. Such individuals shall include Asian American, African American, Hispanic American, Native American, Eskimo, or Aleut.

Women-Owned Business - a business concern that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women who are U.S. citizens or legal resident aliens.

Service-Disabled Veteran - means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

Service-Disabled Veteran-Owned Business - is a business that is at least 51 percent owned by one or more service-disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service-disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service-disabled veterans.

Shelter Workshop - a private non-profit, state, or local government institution that provides employment opportunities for individuals who are developmentally, physically, or mentally impaired, to prepare for gainful work in the general economy. These services may include physical rehabilitation, training in basic work and life skills (e.g., how to apply for a job, attendance, personal grooming, and handling money), training on specific job skills, and providing work experience in the workshop.

VIRGINIA STATE CORPORATION COMMISSION (SCC)
REGISTRATION INFORMATION

The Contractor:

is a corporation or other business entity with the following SCC identification number:
_____ **-OR-**

is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the Contractor in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from Contractor's out-of-state location) **-OR-**

is an out-of-state business entity that is including with this bid/proposal an opinion of legal counsel which accurately and completely discloses the undersigned Contractor's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

Please check the following box if you have not checked any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids:



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Sugar Land, Texas 77478

enCodePlus™
Software as a Service Agreement

Licensor: enCodePlus, LLC
1415 Highway 6 South, Suite A-300
Sugar Land, Texas 77478

Licensee: Fairfax County, VA
c/o Penny Crawley, Contract Specialist
12000 Government Center Parkway
Fairfax, Virginia 22035

Licensor and Licensee agree as follows:

1) Definitions.

- a. *Agreement* means this Software as a Service Agreement, including all incorporated exhibits and documents.
- b. *Authorized Users* means all Users authorized by the Licensor to access and use the Software through the Licensee's account under this Agreement, and includes individual users that are employees of Licensees but excludes outside contractors or agents of the Licensee.
- c. *Calendar Day* or "Day" means All days in a month, including weekends and holidays.
- d. *Effective Date* is the date the Agreement is executed by Licensee and Licensor.
- e. *Force Majeure Event* means an event, such as a hurricane, earthquake, or other casualty caused by nature; labor strike; war; a law, order, proclamation, regulation, or ordinance of any governmental agency that prevents Licensor or Licensee from performing its obligations under this Agreement.
- f. *Law* means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government, political subdivision, or any arbitrator, court, or tribunal of competent jurisdiction.
- g. *Licensed Technology* means Licensor's proprietary software or any third-party software or other intellectual property provided to allow the Licensee to access and utilize the Software in conformance with this Agreement or to make the Software available to the Licensee over the Internet.
- h. *Licensee* means the Fairfax County and its employees.
- i. *Licensee Data* means any and all information, data, materials, works, expressions, or other content, including any that are:
 - (1) uploaded, submitted, posted, transferred, transmitted, or otherwise provided or made available by or on behalf of the Licensee for processing by or through the Software, or
 - (2) collected, downloaded, or otherwise received by Licensor or the Software for the Licensee or pursuant to this Agreement or at the written request or instruction of the Licensee. All output, copies, reproductions, improvements, modifications, adaptations, translations, designs and methods and other derivative works of, based on, derived from, obtained from the Licensee in connection with the



Software, or otherwise using any Licensee Data are themselves also Licensee Data. Licensee Data does not include any Licensor Materials.

- j. *Licensor* means enCodePlus, LLC.
 - k. *Renewal Term* has the meaning set forth in Section 5(a)(2).
 - l. *Services* means all services required of Licensor to ensure the Software is available to the Licensee over the Internet consistent with the terms of this Agreement. These services include: hosting; making the system available to the Licensee over the Internet as a service; ensuring the system operates with other software, hardware, systems, networks, and services; using embedded third party software, including for processing Licensee Data; programming, modifying, or configuring the Software to meet the Licensee's ongoing needs; integrating, customizing, enhancing, or modifying the Software; consulting activities; and training or project management.
 - m. *Service Error* means an event that results in an impairment of performance or essential operations of the Software.
 - n. *Software as a Service (SaaS)* or "Software" means the turnkey system provided by Licensor pursuant to this Agreement as part of its Services, including the Licensed Technology that Licensor will make accessible to the Licensed as part of its Services under this Agreement.
 - o. *Term* means the Initial Term and any subsequent Renewal Terms.
- 2) **Agreement.** This Software as a Service ("Agreement" or "License") is made as of the date of the last signature below, between enCodePlus, LLC, a Texas Limited Liability Company ("Licensor"), and Fairfax County, a public body corporate and political subdivision of Virginia ("Licensee").
- 3) **Licensed Technology.** This is an Agreement between Licensor and Licensee, with a term as set out in Section 5, below. Licensor grants licensee a non-transferable, non-exclusive, limited, non-assignable, and non-sublicensable right to use the Software covered by this Agreement pursuant to the terms of this Agreement including payment of all applicable Fees. This right to use and access the Software is for unlimited concurrent use for Licensee governmental purposes, including on- and off-site access. This License gives only certain rights to Licensee. All other rights are reserved to Licensor.
- 4) **Software Package.** The terms of this Agreement apply to Licensee's use of the Licensed Technology, including an unlimited number of registered license seats and two hours of annual technical support¹.
- 5) **Fees.**
- a. *Payment.*
 - (1) *Initial Term.* Invoices will be issued upon substantial completion of the draft and final deliverables. Licensee shall have 30 calendar days from the date the invoice is issued to review and provide final written comments on each deliverable. The invoice is payable on the 31st day.
 - (2) *Renewal Term.* Licensor shall submit invoices to Licensee for access to the Licensed Technology and all services completed at least 60 days prior to the due date of payment.

¹ Technical support excludes adding or building new content, codification services, and customizing the Software in any way.



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Sugar Land, Texas 77478

(3) *Late Payment.* If any payment due under this Agreement ("Payment Due") is more than 45 days past due, a fee of one percent per month of the Payment Due shall be paid by Licensee in addition to the Payment Due. If Payment Due is more than 45 days late, the Software will be taken off line, and will not be restored until the Payments Due and any Fees associated with each Payment Due has been paid in full.

Table 1 Payment Schedule		
Build	Term	Not-To-Exceed Amount
Zoning Ordinance	One-time	\$20,100
Comprehensive Plan		\$8,900
Digital Plan Summary		\$9,500
Public Facilities Manual (PFM)		\$10,800
PFM Plates		\$3,600
Archiving		\$1,000
Certification Training (3-day)		\$4,500
Cloud Library		\$750
License, Maintenance and Support		
Cloud Library	Annual	\$750
Digital Plan Summary		\$750
License		\$5,500
TOTAL		\$66,150.00
Payment Schedule		\$66,150.00
Execution		\$43,000
Draft Delivery		\$16,535
Final Delivery		\$6,615

6) **Software Build.**

a. *Content.* Zoning Ordinance, Comprehensive Plan, Public Facilities Manual and Plates.

b. *Standard Features.*

- Adobe PDF Generator
- Auto-Numbering / Tracking
- Boolean Search
- Categorization Tags
- Codification Tool
- Collaborative Drafting
- Commenting
- Content Management
- CSS Stylesheet
- Dynamic Tables
- Email Notification
- e-Reader
- Google Analytics
- In-Line Graphics and Tables

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- Internal Hyperlinking
 - External Hyperlinking
 - Microsoft Word Exporter
 - Mobile Device Access
 - My Favorites
 - Pop-Up Definitions
 - Social Media Links
 - Real-Time Web Publishing
 - Track Changes
 - User Guide and Tutorials
 - Version Management
 - Video Animation
 - Web Content Accessibility Compliance
- c. *Support and Maintenance.* With respect to addressing errors which may arise in the Software, Licensor shall provide Support Services for the Software in accordance with the provisions of this Subsection.
- d. *Support Responsibilities.*
- (1) Support shall be provided by Licensor as set for in Table 1, Payment Schedule.
 - (2) Licensor shall:
 - (a) Correct all Service Errors, including by providing defect repair, programming corrections, and remedial programming.
 - (b) Provide telephone or web-based support within one business day of contact by Licensee during Licensor's business hours, or at a mutually agreeable time. Licensor will promptly assess the issue and its severity and on the same day will notify Licensee of the expected time of resolution. Licensor will use commercially reasonable efforts to resolve issues within one business day, or less, and may use any reasonable resolution method available (e.g. fixes, workarounds, etc.) to resolve an issue. The most severe issues whereby the software is unusable will be the first and highest priority, which will be worked on until resolved. Licensor does not guarantee resolution of issues within the response period, only response to initial calls. Failure to contact a Licensee within the response time period because the Licensee is unavailable (e.g. phone busy, no answer, in a meeting, or out of the office) does not constitute Licensor's noncompliance with the response commitment. Failure of Licensor to achieve the technical support response times shall not constitute a material breach of this Agreement.
 - (c) Provide online access to user support information, to the full extent Licensor makes such resources available to its other customers.
- e. *Service Maintenance.* As part of the annual license fee, Licensor shall continuously maintain the Software to optimize availability. Such maintenance services shall be performed outside of Licensee's normal operating hours, and include:
- (1) Scheduled once annually, all updates, bug fixes, enhancements, new releases, new versions, and other improvements to the Software, excluding additional features, at no additional charge;
 - (2) Ensuring that all changes to the Software will not adversely affect the system; and
 - (3) All such services and repairs necessary to maintain access to or use of the Software.
- 7) **Add-Alternate Services.** As elected by Licensee, Licensor may undertake the following services:
- a) *Escrow.* Licensor shall place all source code constituting and relating to the Software into an escrow account pursuant to the terms of an escrow agreement (the "Escrow Agreement") to be entered into



between Licensor and the escrow agent (the "Escrow Agent") which shall name Licensee as a beneficiary; provided, however, that the Escrow Agreement shall contain substantially the following conditions with respect to release of escrow to Licensee: (i) Licensor is adjudged bankrupt, and/or (ii) in the event of a catastrophic loss which terminates Licensor's operations, then Licensee shall have a non-exclusive, royalty-free, perpetual, worldwide license to use the source code released from the escrow in its sole discretion, solely for its own internal use and not for any resell, license, or sub-license. In consideration of Licensor placing the source code in escrow, Licensee will pay an annual escrow fee of \$1,000, plus a \$500 escrow initiation fee, for the first license year and an annual source code escrow fee of \$1,000 thereafter. All charges for additional services which may be requested from the escrow company by Licensee as a beneficiary to the escrow agreement shall be payable by Licensee.

- b. *Document Management.* The "Content" identified in Section 7, Software Build, above, may be systematically managed and maintained by Licensor. Such services include the integration of new or amended text and the documented history (i.e., ordinance, resolution, bill, by-law, plus the adopted and/or effective date, and legal citation(s), as applicable). All amendments will be denoted by Title, Chapter, Article, or Section, as applicable, together with a cumulative history table of all amendments. The ordinance, resolution, bill, or by-law is uploaded to the cloud library and linked within the document text and history table. Keywords may be added to maintain a searchable history of amendments.
- c. *Legal Review.* During the document management process, an experienced attorney is available to review the document for its integrity relative to grammatical correctness, conflicts and internal inconsistencies, and conformance with state law.
- d. *Payment.* Upon completion, an invoice will be issued, billed at a rate of \$18 per page and/or \$200 per hour for legal review services. Fees for the Initial Term and each Renewal Term shall be as set forth in Section 6, Fees.
- e. **Acknowledgement of Proprietary Rights.**
 - a. Licensee acknowledges that Licensor holds all right, title, and interest in and to the License Programs and Documentation, including all materials, media and copies thereof, and including all intellectual property rights (trade secrets and copyrights) pertaining thereto, and that this Agreement ("Agreement") conveys to Licensee only a limited right to use the License Programs and Documentation. Such right is fully revocable in accordance with the provisions of this Agreement. Licensee agrees that, except for such right of use, it shall not assert any right, title, or interest in or to the License Programs or Documentation.
 - b. Licensee acknowledges that the License Programs and Documentation constitute commercially valuable, proprietary, confidential products of Licensor, the design and development of which reflect a considerable effort on the part of skilled development professionals and the investment of considerable time and money. Licensee further acknowledges that the License Programs and Documentation contain substantial Trade Secrets of Licensor, which have been entrusted to

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Sugar Land, Texas 77478

Licensee for use only as expressly authorized under this Agreement. As used herein, Trade Secrets mean and include any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret (in the sense that its confidentiality affords Licensor a competitive advantage over its competitors). Trade Secrets include (without limitation) the source code, system design and specifications, command structure, algorithms, and input and output formats pertaining to the License Programs. Trade Secrets do not include, however, any data or information that (i) is generally known to the public, (ii) has been or is disclosed to Licensee as a matter of right and without restriction by a third party who has lawfully obtained such data or information without obligation to Licensor, (iii) is independently developed by Licensee without reliance in any way on the License Programs or Documentation, or (iv) is approved for unrestricted publication by Licensor at any time. If required by order of any government authority, Licensee may disclose to such authority data, information, or materials pertaining to or involving the License Programs and Documentation only to the extent required by such order, provided that Licensee shall first have used its best efforts, in cooperation with Licensor, to obtain a protective order reasonably satisfactory to Licensor and sufficient to maintain the confidentiality of such data, information, or materials.

- c. Licensor claims and reserves to itself all rights and benefits afforded under U.S. copyright law and all international copyright conventions in all License Programs and Documentation as restricted, unpublished works.

f. Restrictions on Use and Copying.

- a. Licensee shall devote its best efforts, consistent with the practices and procedures under which it protects its own most valuable proprietary information and materials, to protect the License Programs and Documentation against any unauthorized or unlawful use, disclosure, dissemination, or copying.
- b. Licensee shall not, at any time, disclose or disseminate the License Programs or Documentation (including any extract, copy, adaptation, or transcription thereof), or the Trade Secrets embodied therein, whether in whole or in part, to any employee, consultant, contractor, or other person who (i) does not have a need to know and obtain access thereto in order to give effect to the rights granted to Licensee under this Agreement or (ii) is not legally bound to maintain the proprietary and confidential nature of such materials and to limit use and copying thereof and access thereto as required by the terms of this Agreement. Licensee shall require any persons authorized to have access to the License Programs and Documentation to accept the terms and conditions of such access.
- c. Licensee shall make no hard copies of the License Programs or Documentation.
- d. Under no circumstances may Licensee decompile, reverse engineer, or "unlock" (as the term is generally used in the industry) the License Programs.



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- g. **Survival of Obligations.** Licensee's obligations identified in this Agreement shall survive the termination of the Agreement and remain in effect for so long as Licensor is entitled to protection of its rights in the Licensed Programs and Documentation under applicable law.
- 8) **Notices.**
- a. *Generally.* Except as provided in Subsection 9.b., notices delivered pursuant to this Agreement shall be sent to the people and addresses shown in this Section. Generally, notices shall be delivered by First Class Mail or courier service. Such notice shall be deemed to have been given when deposited in the United States Mail or courier service properly addressed to the intended recipient.
 - b. *Upgrades, Maintenance, Service Interruptions, and Planned Outages.* Notices regarding upgrades, maintenance, service interruptions, and planned outages shall be delivered by electronic mail to the Licensee. Licensee may change the individuals who receive notice pursuant to this Subsection by electronic mail notice to Licensor.

To Licensor	To Licensee
<p>Bret C. Keast, AICP, President enCodePlus, LLC 1415 Highway 6, Suite A-300 Sugar Land, TX 77478 Tel: 281.302.5847 Email: bret@enCodePlus.com</p> <p><i>With copy to:</i> William G. Harger, Attorney at Law William G. Harger & Associates, PLLC 704 Main Street Richmond, Texas 77469 Tel: (281) 202-6000 Email: harger@hargerlaw.com</p>	<p>Corey Block, Planner (703) 324 – 1308 Email: corey.block@fairfaxcounty.gov</p> <p>Carmen Bishop, Planner (703)324-1221 Email: carmen.bishop@fairfaxcounty.gov Zoning Administration Department of Planning and Development 12055 Government Center Parkway Suite 807 Fairfax, VA 22035</p> <p><i>With copy to:</i> Penny Crawley, Contract Specialist Department of Procurement & Material Management 12000 Government Center Parkway, Suite 427 Fairfax, Virginia 22035-0014 Telephone Number: (703) 324-3884 E-mail: penny.crawley@fairfaxcounty.gov</p>

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Sugar Land, Texas 77478

Account Management	Financial Services Department (minimum two)
Kim Keast, Business Manager enCodePlus, LLC 1415 Highway 6, Suite A-300 Sugar Land, TX 77478 Tel: (281) 302-5847 Email: kim@encodeplus.com	Fairfax County Barbara Byron, Director 12000 Government Center Parkway Fairfax, Virginia 22035 Tel: (703)324-9300 Email: barbara.byron@fairfaxcounty.gov Fairfax County Michelle Davis, Management Analyst 12000 Government Center Parkway Fairfax, Virginia 22035 Tel: (703)324-1334 Email: michelle.davis@fairfaxcounty.gov
GIS Build	GIS Department / Contact
Suhag Kansara, AICP enCodePlus Tel: (281) 888-0697 Email: suhag@encodeplus.com	Not applicable

- 9) **Integration.** This Agreement along with contract 4400010271 constitute the entire agreement between the parties with regard to the subject matter hereof and thereof. This Agreement supersedes all previous agreements between or among the parties. There are no agreements, representations, or warranties between or among the parties other than those set forth in this Agreement or the documents and agreements referred to in this Agreement.
- 10) **Force Majeure.**
- a. *Excused.* The party affected by the Force Majeure Event shall be excused from performance due to a Force Majeure Event as long as the affected party:
 - (1) gave prompt notice to the other party,
 - (2) took all reasonable steps to avoid the cause of nonperformance, and
 - (3) continued to take reasonable steps to avoid and remove the cause of nonperformance.
 - b. *Notice.* The affected party shall promptly notify the other party in writing and resume performance as soon as possible after the Force Majeure Event and to the full extent the cause of nonperformance is removed.
- 11) **Amendments and Modifications.** No amendment, modification, or supplement to this Agreement shall be binding on any of the parties unless it is in writing and signed by the parties.

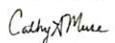


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Sugar Land, Texas 77478

- 12) **General Interpretation.** The terms of this Agreement have been negotiated by the parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the agreement. No rule of strict construction will be applied against any person.
- 13) **Further Assurances.** Each of the parties agree to take such further action to execute and deliver such additional documents as may be reasonably required to them to effectuate the purpose and intent of this Agreement.
- 14) **Severability.** If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

Fairfax County

Licensee

DocuSigned by:

 0EEA0FDCE6634D3...

Authorized Agent Signature

Cathy Muse, County Purchasing Agent

Authorized Agent (Typed)

Date

Effective Date

enCodePlus, LLC

Licensor



Authorized Agent Signature

Bret C. Keast, CEO

Authorized Agent (Typed)

Date



1415 Highway 6 South, Suite A-300
Sugar Land, Texas 77478

EXHIBIT A
REQUEST FOR USER NAME AND PASSWORD

Fairfax County, VA ("Licensee") requests that a new password be issued by enCodePlus, LLC ("Licensor") for the benefit of Licensee to enable the undersigned user ("User") to access and use the maintenance module and User Guide for the software program. Licensee and the undersigned agree to comply with the below provisions of the license agreement between Licensor and Licensee.

Licensee agrees that each of Licensee's employees having administrative or maintenance access to the Software, and at the full discretion of Licensor, contract workers and any third parties acting on behalf of Licensee or any other person or entity acting as an agent for Licensee in any capacity, shall be identified to Licensor and issued a unique password. Each person receiving a password must first complete and sign the user acknowledgment form below. Submission of such acknowledgment form will constitute a request by Licensee for issuance of a new password for a particular individual, and upon receipt of a completed acknowledgment form, Licensor will issue a password for that individual user. **Passwords are not transferable.** When Licensee becomes aware that a user will no longer need a password, for any reason, Licensee agrees to immediately notify Licensor that the password is no longer active. Any replacement users will be issued a new password. Licensee assumes full responsibility for any improper use of a password issued at the request of Licensee, and indemnifies Licensor from any loss by or damage to Licensor that may occur as a result of an improper use of any such password.

The undersigned supervisor and each licensed user agree to the terms of this Agreement and are responsible for the User's compliance.

SUPERVISOR SIGNATURE: _____

Printed name: _____

Title: _____

Date: _____



1415 Highway 6 South, Suite A-300
Sugar Land, Texas 77478

USER NO. 1

Printed name: _____

Title: _____

Date: _____

User's email: _____

Username: _____

USER NO. 2

Printed name: _____

Title: _____

Date: _____

User's email: _____

Username: _____

USER NO. 3

Printed name: _____

Title: _____

Date: _____

User's email: _____

Username: _____



1415 Highway 6 South, Suite A-300
Sugar Land, Texas 77478

USER NO. 4

Printed name: _____

Title: _____

Date: _____

User's email: _____

Username: _____

USER NO. 5

Printed name: _____

Title: _____

Date: _____

User's email: _____

Username: _____

USER NO. 6

Printed name: _____

Title: _____

Date: _____

User's email: _____

Username: _____



1415 Highway 6 South, Suite A-300
Sugar Land, Texas 77478

USER NO. 7

Printed name: _____

Title: _____

Date: _____

User's email: _____

Username: _____

USER NO. 8

Printed name: _____

Title: _____

Date: _____

User's email: _____

Username: _____

USER NO. 9

Printed name: _____

Title: _____

Date: _____

User's email: _____

Username: _____



1415 Highway 6 South, Suite A-300
Sugar Land, Texas 77478

USER NO. 10

Printed name: _____

Title: _____

Date: _____

User's email: _____

Username: _____

USER NO. 11

Printed name: _____

Title: _____

Date: _____

User's email: _____

Username: _____

USER NO. 12

Printed name: _____

Title: _____

Date: _____

User's email: _____

Username: _____