

INTERLOCAL AGREEMENT FOR LICENSING SCPDC SOFTWARE

WHEREAS, this agreement is made between the City of Killeen, Texas and the South Central Planning and Development Commission, Texas. Pursuant to the authority granted by the “Texas Interlocal Cooperation Act,” Chapter 791 Texas Government Code providing for the cooperation between local governmental bodies, the parties hereto, in consideration of the premises and mutual promises contained herein, agree as follows:

The contract is made under the authority of Sections Chapter 791 of the Texas Government Code.

The parties, in performing governmental functions or in paying for the performance of governmental functions hereunder shall make that performance or those payments from current revenues legally available to that party.

The governing bodies of each party find that the subject of this contract is necessary for the benefit of the public and that each party has the legal authority to perform and to provide the governmental function or service which is the subject matter of this contract; furthermore, the governing bodies find that the performance of this contract is in the common interest of both parties; and that the division of cost fairly compensates the performing party for the services under this contract.

Sec. 1. Parties and Purpose

1.1. The Capital Area Council of Governments ("CAPCOG") is a regional planning commission and political subdivision of the State of Texas organized and operating under the Texas Regional Planning Act of 1965, Chapter 391 of the Local Government Code, as amended, and is a signatory Agent for Licensor.

1.2. The City of Killeen, Texas (“Licensee”) is a Texas home-rule city.

1.3. The South Central Planning and Development Commission (“SCPDC”) (“Licensor”) is a regional planning commission and Political Subdivision of the State of Louisiana, domiciled in Terrebonne Parish. The district was established in 1973 and created by law in 1978 under state act 472. The statute allows its member governmental entities to come together through LICENSOR to provide long range planning, act as a state and federal liaison, provide guidance and study to current issues affecting government, and provide services to business and citizens.

1.4. SCPDC has created MyPermitNow, MyProjectNow, MyAddressNow, Inspection Anywhere and MyGovernmentOnline software (the “SCPDC Software”) and this contract is entered into among Licensee, and Licensor under chapter 791 of the Government Code to license Licensee to use the SCPDC Software under certain terms and conditions. CAPCOG has been granted a limited power of attorney by Licensor to execute this contract on Licensor’s behalf.

This INTERLOCAL AGREEMENT FOR LICENSING SCPDC SOFTWARE (this "Agreement") is entered into by and between Licensor and Licensee and describes the terms and conditions pursuant to which Licensor shall license to Licensee the use of, and provide support for, certain Software (as defined below).

In consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

2. DEFINITIONS

2.1 "CONFIDENTIAL INFORMATION" means this Agreement, including all of its terms, and all its Schedules, any addenda hereto signed by both parties, all Software listings, Documentation, information, data, drawings, benchmark tests, specifications, trade secrets, object code and machine-readable copies of the Software, source code relating to the Software, and any other proprietary information supplied to Licensee by Licensor, or by Licensee to Licensor and clearly marked as "confidential information", including all items defined as "confidential information" in any other agreement between Licensee and Licensor whether executed prior to or after the date of this Agreement.

2.2 "DOCUMENTATION" means any on-line help files, instruction manuals, operating instructions, user manuals, and specifications provided by Licensor which describe the use of the Software and which either accompany the Software or are provided to Licensee at any time.

2.3 "EFFECTIVE DATE" means the later of the dates on which Licensee and Licensor have signed this Agreement.

2.4 "EQUIPMENT" means the computer system, including peripheral equipment and operating system software, specified in Schedule B.

2.5 "MAJOR AND MINOR UPDATES" shall mean updates, if any, to the Licensor Software. Major Updates involve additions of substantial functionality while Minor Updates do not. Major Updates are designated by a change in the number to the left of the decimal point of the number appearing after the product name while Minor Updates are designated by a change in such number to the right of the decimal point. Example, My Permit Now version X.0 (major update) and My Permit Now version 0.Y (minor update). Licensor is the sole determiner of the availability and designation of an update as a Major or Minor Update. Where used herein "Updates" shall mean Major or Minor Updates interchangeably.

2.6 "SITE" means each physical location, or each Internet link accessible by end-users through Licensee's Web Site, at which Licensee and its customers are entitled to Use the Software.

2.7 "SOFTWARE" means the computer software programs specified in Schedule A and otherwise provided for Licensee use pursuant to this Agreement.

2.8 "USE" means loading, utilization, storage or display of the Software by Licensee for its own internal information processing, and utilization by end users accessing Licensee's Web Site through the Internet.

2.9 “PERMIT” shall mean any type of permit, including but not limited to, new construction permit, building permit, structure renovation permit, mechanical permit, plumbing permit, gas permit, electrical permit, and sign permit. Multiple permits listed under one number shall not be considered a single permit when calculating funds owed Licensor pursuant to the terms of this Agreement.

2.10 “License Fee(s)” shall mean all payment due pursuant to this Agreement, including the permit volume package amount and the payments due for the elected add-on modules as detailed in Schedule A.

3. LICENSE, DELIVERABLES AND COPIES

3.1 LICENSE GRANT.

(a) Subject to the terms of this Agreement, Licensor grants to Licensee a nonexclusive, nontransferable, royalty-bearing user license during the term of this Agreement to use the Licensor’s Software, through Internet access only, internally on one or more servers controlled by or on behalf of Licensee solely for purposes of using the Licensor’s products known as My Permit Now, MyProjectNow, MyAddressNow, MyGovernmentOnline, Inspection Anywhere. The scope of the foregoing license encompasses Licensee’s internal use of Licensor’s Software in connection with providing services to Licensee’s customers, allowing customers of Licensee access to Licensee’s portal for the purpose of researching permit requirements and submitting permit requests to the Licensee, but excludes any sublicensing of Licensor’s Software, uploading or otherwise transferring, or providing direct access to, the Licensor’s Software to any third party without Licensor’s prior written consent, including access by any third party to the Licensor’s Software on a stand-alone basis. License granted hereunder includes the use of Documentation in connection with Use of the Software.

(b) OWNERSHIP. Licensor and its Licensors solely own all right, title and interest in and to the Licensor’s Software, and reserve all rights therein not expressly granted under this Agreement. This license transfers to Licensee neither title nor any proprietary or intellectual property rights to the Software, Documentation, or any copyrights, patents, or trademarks, embodied or used in connection therewith, except for the rights expressly granted herein.

(i) Without limiting the generality of the foregoing, except as expressly stated in paragraph (a), Licensee may not directly or through any third party (a) transfer or sublicense, in whole or part, any copies of the Licensor Software to any third party; (b) modify, decompile, reverse engineer, or otherwise attempt to access the source code of the SCPDC Software; or (c) copy the SCPDC Software, except such copies of the records as necessary for reasonable and customary back-up and disaster recovery purposes. Licensee will not delete or alter the copyright, trademark or other proprietary rights notices of SCPDC and its Licensors included with the SCPDC Software as delivered to Licensee, and will reproduce such notices on all copies of the SCPDC Software. If derivative works of the SCPDC Software are prepared by or on behalf of Licensee based on suggestions or requests by Licensee, Licensor will solely own such modifications.

(ii) The Licensee may not develop products that interface or are intended for use with the SCPDC Software ("Add-On Products") without Licensor’s express written permission.

(c) Notwithstanding the inclusion of Licensee's customer in the class of allowed users, Licensor's affirmative obligations will be limited to the entity named above. Licensee hereby shall indemnify and hold harmless Licensor from and against all losses, costs, liabilities and expenses arising out of or relating to any breach by Licensee of this agreement, use of the software, or as a result of the carelessness, negligence or improper conduct of Licensee, its agents, employees or representatives.

3.2 DELIVERABLES. Licensor shall issue to Licensee, as soon as practicable, a web address from where the Licensee can select "jurisdiction login." The login account shall be comprised of a unique username (for instance john.doe@scpd.org) and password for each user of the system in the employ and under control of Licensee.

3.3 COPIES. Whenever Licensee is permitted to copy or reproduce all or any part of the Documentation, all titles, trademark symbols, copyright symbols and legends, and other proprietary markings must be reproduced.

4. LICENSE RESTRICTIONS. Licensee agrees that it will not itself, or through any parent, subsidiary, affiliate, agent or other third party: (a) sell, lease, license or sub-license the Software or the Documentation; (b) decompile, disassemble, or reverse engineer Software, in whole or in part; (c) write or develop any derivative software or any other software program based upon the Software or any Confidential Information; (d) use the Software to provide services on a 'service bureau' basis; or (e) provide, disclose, divulge or make available to, or permit use of the Software by any unauthorized third party without Licensor's prior written consent.

5. LICENSE FEE

5.1 LICENSE FEE. In consideration of the license granted pursuant to Section 3.1. Licensee agrees to pay Licensor the License Fee specified in Schedule A. Licensee shall pay Licensor a fee based on Licensee's use of the SCPDC Software, determined according to the terms set forth in Schedule A. It is expressly agreed that the Licensee will not house transactions that are the basis of fees paid to Licensor in another system with the intention of avoiding the responsibility of paying fees to Licensor for the term of this agreement. Should Licensor determine that Licensee violates this provision, Licensor, at its expense and on reasonable notice, may cause such Licensee's records to be audited during regular business hours at Licensee's facilities. If an audit reveals underpayment of fees due under this Agreement, all such amounts will be promptly paid with interest at the prevailing U.S. dollar prime rate accruing from the original due date.

5.2 TAXES. Licensor and Licensee are both tax exempt entities and no taxes are expected from this transaction. The parties are exempt from paying sales tax and shall provide one another with a tax exempt certificate. In no event shall the parties be liable for any personal property taxes which may otherwise be levied on the other or any taxes levied on either parties' employees' wages or any other taxes which may otherwise be required to be paid by the parties under federal or state law.

5.3 NO OFFSET. Fees and expenses due from Licensee under this Agreement may not be withheld or offset by Licensee against other amounts owed by Licensor for any reason.

6. MAINTENANCE AND SUPPORT. Licensee agrees to pay Fees according to Schedule A. For so long as Licensee is current in the payment of all fees in Schedule A, with respect to

each software module, Licensee will be entitled to Maintenance and Support for each software module as set forth in Schedule C attached hereto. Failure to pay fees with respect to any software module shall be deemed a material breach of this Agreement and in such event Licensor shall have the right to terminate the rights granted hereunder with respect to such site for the term of this Agreement.

7. LIMITED WARRANTY AND LIMITATION OF LIABILITY

7.1 LIMITED WARRANTY. Licensor warrants for the term of the contract from the Effective Date (the "Warranty Period") the Software will perform in substantial accordance with the Documentation under normal use. If during the Warranty Period the Software does not perform as warranted (a "Non-Conformance"), Licensor shall undertake to correct such Non-Conformance, or if correction is reasonably not possible, replace such Software free of charge. If neither of the foregoing is commercially practicable, Licensor shall terminate this Agreement and refund to Licensee the License Fee. THE FOREGOING ARE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY. The warranty set forth above is made to and for the benefit of Licensee only. The warranty will apply only if:

(a) the Software has been properly used at all times and in accordance with the instructions for Use; and

(b) no modification, alteration or addition has been made to the Software by persons under the control of Licensee (except pursuant to the authorized Use of the Software specified in Schedule A) except as authorized in writing by Licensor; and

(c) Licensee has not requested modifications, alterations or additions to the Software that cause it to deviate from the Documentation;

(d) Licensor warrants that it possesses all of the right, title, interest and authority to enter into this agreement with Licensee. Licensor also warrants that no lawsuit or claim concerning the Software is currently pending.

Any pre-production versions of the Software distributed to Licensee are delivered "as-is," without any express or implied warranties. No employee, agent, representative or affiliate of Licensor has authority to bind Licensor to any oral representations or warranty concerning the Software. Any written representation or warranty not expressly contained in this Agreement will not be enforceable.

7.2 DISCLAIMER. EXCEPT AS SET FORTH ABOVE, LICENSOR MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO THE SOFTWARE OR THE DOCUMENTATION, OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO LICENSEE UNDER THIS AGREEMENT, INCLUDING MAINTENANCE AND SUPPORT. LICENSOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO THE SOFTWARE, DOCUMENTATION AND SAID OTHER MATERIALS AND SERVICES, AND WITH RESPECT TO THE FOREGOING. IN ADDITION, LICENSOR DISCLAIMS ANY WARRANTY WITH RESPECT TO, AND WILL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR, THE OPERATION OF THE SOFTWARE IF PROGRAMS ARE MADE THROUGH THE USE OF SOFTWARE OR NON-LICENSOR SOFTWARE THAT CHANGE, OR ARE ABLE TO CHANGE, THE DATA MODEL OF THE SOFTWARE.

7.3 LIMITATION OF LIABILITY. IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SOFTWARE OR SERVICES PERFORMED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, LICENSOR WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN DELIVERY OR FURNISHING THE SOFTWARE OR SAID SERVICES. LICENSOR'S LIABILITY UNDER THIS AGREEMENT FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, RESTITUTION, WILL NOT, IN ANY EVENT, EXCEED THE LICENSE FEE PAID BY LICENSEE TO LICENSOR UNDER THIS AGREEMENT.

7.4 ALLOCATION OF RISK. The provisions of this Section 7 allocate risks under this Agreement between Licensee and Licensors. Licensors' pricing reflects this allocation of risks and limitation thereof in accordance with the provisions of this Agreement and not liability.

7.5 INTENTIONALLY OMITTED

7.6 LIMITATION. The foregoing obligations shall not apply to the extent the infringement arises as a result of modifications to the Software made by any party other than Licensors or Licensors's authorized representative.

7.7 EXCLUSIVE REMEDY. The foregoing states the entire liability of Licensors and Licensee's exclusive remedy with respect to infringement of any patent, copyright, trade secret or other proprietary right.

7.8 To the extent allowed by law, Licensee shall indemnify and hold Licensors harmless from and against any costs, losses, liabilities and expenses arising out of third party claims related to any breach by Licensee of this agreement, use of the software, or as a result of the carelessness, negligence or improper conduct of Licensee, its agents, employees or representatives.

7.9 Insurance

(a) Workers' Compensation, statutory limits, and Employer's Liability with limits no less than \$1,000,000.

(b) Commercial General Liability insurance, covering bodily injury and property damage liability, products & completed operations, with minimum limits \$1,000,000 each occurrence for bodily injury and property damage, \$2,000,000 general aggregate.

(c) Business Auto Liability insurance, covering any vehicle used by vendor in performance of work for Licensors or around Licensors's premises. Limits no less than \$1,000,000 each accident.

(d) Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include claims involving infringement of intellectual property, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network

security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

8. CONFIDENTIALITY

8.1 CONFIDENTIAL INFORMATION. Each party acknowledges that the Confidential Information constitutes valuable trade secrets and each party agrees that it shall use Confidential Information solely in accordance with the provisions of this Agreement and will not disclose, or permit to be disclosed, the same, directly or indirectly, to any third party without the other party's prior written consent. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. Furthermore, it is understood that the terms of this Agreement reflect consideration received by Licensee in return for being an early user of the Software. However, neither party bears any responsibility for safeguarding information that (i) is publicly available, subject to a public records request pursuant to the Texas Public Information Act (ii) already in the other party's possession and not subject to a confidentiality obligation, (iii) obtained by the other party from third parties without restrictions on disclosure, (iv) independently developed by the other party without reference to Confidential Information, or (v) required to be disclosed by order of a court or other governmental entity. Nothing herein will prevent routine discussions by the parties that normally take place in a "user group" context.

8.2 INJUNCTIVE RELIEF. In the event of actual or threatened breach of the provisions of Section 8.1, the non-breaching party will have no adequate remedy at law and will be entitled to immediate and injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

9. TERM AND TERMINATION

9.1 Term. This Agreement will take effect on the Effective Date and will remain in force for a period of two (2) years thereafter. The contract will automatically renew for 12-months periods following the end of the initial term and each subsequent renewal term unless either party notifies the other of its intention not to renew this Agreement at least 30 days in advance or is terminated in accordance with this Agreement.

9.2 TERMINATION. This Agreement is terminated by:

(a) By Licensee. Upon written notice to Licensors if any of the following events occur: (i) Licensors is in material breach of any term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within forty-five (45) days after Licensee gives Licensors notice of such breach, including but not limited to a serious defect or flaw in the Licensors software that prevents the Licensee from using the system to support Licensee's operations in issuance of permits, or (ii) Licensors becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes.

(b) By Licensors. Upon written notice to Licensee if any of the following events ("Termination Events") occur, provided that no such termination will entitle Licensee to a refund of any portion of the License Fee or maintenance fees: (i) Licensee fails to pay any undisputed amount due to Licensors within thirty (30) days after Licensors gives the Licensee written notice of such non-payment; (ii) Licensee is in material breach of any non-monetary term, condition or provision of Agreement, which breach, if capable of being cured, is not cured within forty-five

(45) days after Licensor gives Licensee written notice of such breach; or (iii) Licensee becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes; or (iv) Licensor elects to refund Licensee's fees.

9.3 EFFECT OF TERMINATION. If any Termination Event occurs, termination will become effective immediately or on the date set forth in the written notice of termination. Termination of this Agreement will not affect the provisions regarding Licensee's or Licensor's treatment of Confidential Information, provisions relating to the payment of amounts due, or provisions limiting or disclaiming Licensor's liability, which provisions will survive termination of this Agreement. Within fourteen (14) days after the date of termination or discontinuance of this Agreement for any reason whatsoever, Licensee shall return any copies of the SCPDC Software, derivative works and all copies thereof, in whole or in part, all related Documentation and all copies thereof, and any other Confidential Information in its possession. Upon termination of this Agreement, Licensee shall cause the SCPDC Software to be removed from all computer units, including desktops and laptops, in the Licensee's office and from the computer units of third-party contractors performing work for Licensee. Licensee shall furnish Licensor with a certificate signed by an executive officer of Licensee verifying that the same has been done.

9.4 In the event of the termination or nonrenewal of this agreement, Licensor warrants that the information stored by Licensor as a result of Licensee use of the MyPermitNow will be available to Licensee.

10. NON-ASSIGNMENT. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by either Party, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

11. NOTICES. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate, (c) sent by overnight air courier, or (d) by facsimile, in each case properly posted to the appropriate address set forth below. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after deposited the mail as set forth above, one (1) day after delivery to an overnight air courier service, or one (1) day after the moment of transmission by facsimile.

To: South Central Planning and
District Commission

To: City of Killeen
Information Technology

Address: 5058 West Main St.
Houma, LA 70360

Address: 101 E Ave D
Killeen, Texas 76541

12. MISCELLANEOUS

12.1 VIRUSES AND DISABLING DEVICES. Neither SCPDC Software nor any enhancements, modifications, upgrades, updates, revisions or releases thereof shall contain (i)

any mechanism such as a "trap door", "time bomb", or "logic bomb", software protection routine or other similar device, that would enable Licensor to disable the Software or make the Software inaccessible to Licensee after the Software is installed; or (ii) to the best of Licensor's knowledge, any computer "virus", "worm" or similar programming routine.

12.2 **FORCE MAJEURE.** Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquakes, fire and explosions, but the inability to meet financial obligations is expressly excluded.

12.3 **WAIVER.** Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. Except as expressly stated in this Agreement, no exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

12.4 **SEVERABILITY.** The provisions of this agreement are severable and if for any reason a clause, sentence, paragraph, or other part of this agreement shall be determined to be invalid by a court or federal or state agency, board or commission having jurisdiction over the subject matter thereof, such invalidity shall not affect other provisions which can be given effect without the invalid provision.

12.5 **STANDARD TERMS OF LICENSEE.** No terms, provisions or conditions of any purchase order, acknowledgment or other business form that Licensee may use in connection with the acquisition or licensing of the Software use will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Licensor to object to such terms, provisions or conditions.

12.6 **AMENDMENTS TO THIS AGREEMENT.** This Agreement may not be amended, except by a writing signed by both parties.

12.7 **LICENSOR'S PRIOR CONSENT.** Unless expressly provided otherwise in this Agreement, any prior consent of Licensor that is required before Licensee may take an action may be granted or withheld in Licensor's sole and absolute discretion.

12.8 **EXPORT OF SOFTWARE.** Licensee may not export or re-export the SCPDC Software without the prior written consent of Licensor and without the appropriate United States and foreign government licenses.

12.9 **PUBLIC ANNOUNCEMENTS.** Licensee acknowledges that Licensor may desire to use its name in press releases, product brochures and financial reports indicating that Licensee is a Licensee of Licensor, and Licensee agrees that Licensor may use its name in such a manner.

Licensee reserves the right to review any use of its name and to withhold permission, which permission will not reasonably be withheld.

12.10 HEADINGS. Section and Schedule headings are for ease of reference only and do not form part of this Agreement.

12.11 ENTIRE AGREEMENT. This Agreement (including the Schedules and any addenda hereto signed by both parties) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter, except as provided in Section 2.1 with respect to the definition of "Confidential Information."

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF KILLEEN, TEXAS

SOUTH CENTRAL PLANNING AND
DEVELOPMENT COMMISSION THROUGH ITS
AGENT, CAPCOG

By:

By:

Danielle Singh, Assistant City Manager

Betty Voights, Executive Director

Date

Date

Witness

Date: _____

SCHEDULE A

SOFTWARE AND LICENSE FEE

A.1. SOFTWARE USE

Licensee use of SCPDC's My Permit Now System, standard configuration, including the following modules: Permit Management, Plan Review, Inspections, Alerts and functionality that is incorporated into My Permit Now System and not identified as a separate chargeable option Inspection Anywhere System, Standard Configuration.

A.2. LICENSE FEE

1. MyPermitNow and Inspection Anywhere:

The following package prices are offered though the initial term of the contract. Please fill in below which permit volume package most reasonably fits your anticipated annual permit volume.

			MONTHLY RATE		
Permit Volume	Overage Rate	Permits	Planning & Zoning	Code Enforcement	Addressing / GIS Integration
0 - 100	\$10.00	\$99.00	\$99.00	\$99.00	\$230.00
101 - 500	\$10.00	\$260.42	\$156.25	\$99.00	\$230.00
501 - 1000	\$10.00	\$500.00	\$300.00	\$99.00	\$230.00
1001 - 2000	\$10.00	\$958.33	\$575.00	\$143.75	\$230.00
2001 - 4000	\$10.00	\$1,833.33	\$1,100.00	\$275.00	\$230.00
4001 - 6000	\$10.00	\$2,500.00	\$1,500.00	\$375.00	\$230.00
6001 - 8000	\$10.00	\$3,166.67	\$1,900.00	\$475.00	\$230.00
8001 - 10000	\$10.00	\$3,750.00	\$2,250.00	\$562.50	\$230.00
10001 - 12000	\$10.00	\$4,250.00	\$2,550.00	\$637.50	\$230.00
12001 - 14000	\$10.00	\$4,666.67	\$2,800.00	\$700.00	\$230.00
14001 - 16000	\$10.00	\$5,000.00	\$3,000.00	\$750.00	\$230.00
16001 - 18000	\$10.00	\$5,250.00	\$3,150.00	\$787.50	\$230.00
18001 - 30000	No Overage	\$5,416.67	\$3,250.00	\$812.50	\$230.00

ANNUAL PERMIT VOLUME OVER 30,000 A YEAR MAY REQUIRE A CUSTOM QUOTE.

The Jurisdiction has agreed to the **10001-12000 Permit Volume, 101-500 Planning and Zoning and Addressing/GIS Integration** package. It is understood this will be billed on a levelized billing system of **\$4,636.25** monthly. If anytime during a calendar year the total volume of permits exceeds the packages permit volume, Licensee shall pay, in addition to its package Rate Per Permit fee, the Overage Rate shown in the Schedule above. Permit volume packages may be adjusted annually. At the end of a permit volume year if the jurisdiction's permit volume exceeds 20% of the max permit volume number of their currently subscribed package the jurisdiction shall automatically subscribe to the package that the total new permit volume count places them in.

Add-on modules of a standard configuration of Planning & Zoning, Solution Center, Addressing / GIS Integration may be activated by request during the term of this agreement for the monthly rates defined in the rate chart in Schedule A that corresponds to the jurisdictions selected permit package. In the event the jurisdiction makes a change to the original permit package chosen, the monthly rate shall change to correspond with the rate chart as shown in Schedule A.

Other Fees:

On-Site Visits: Reimbursement of lodging, transportation and meals.

Integration for online credit card or ACH transactions: Existing Credit Card Vendor: \$100.00 one-time fee; New Credit Card Vendor: \$500.00 one-time fee.

Historic Data Imports: Imports requiring 20 hours of staff time or less free of charge. Imports requiring more than 20 hours of analyst time is subject to a custom quote.

Additional Modules:

Reoccurring Septic Permits, Fire Marshal, and Public Works Modules available by custom quote.

Licensors will invoice Licensee at the beginning of each month. The invoices shall be payable within 30 days of the date of the invoice.

SCHEDULE B

EQUIPMENT SITE, USER NAME, AND PERSONAL ACCESS PASSWORD

B.1. The following is the Equipment on which Licensees may use the software:

Restricted to computers used by Licensee's personnel in order to accomplish Personnel's job duties via the Internet for access to SCPDC Software, each user having a specially assigned user name and a personal access password.

B.2. At the execution of this Agreement, Licenser shall provide a USER CREATION form to the Licensee to be used for Personnel account creation requests. Upon completion of the forms the licensee will return the forms to Licenser or its AGENT and accounts shall be created in the system with information provided on the forms. Users can change the provided password on the form in the software after their first login. The personal user name and personal access password will be maintained in camera and not distributed to the public. Additional personal user names and personal access passwords may be provided upon a written request to Licenser with the user creation form providing the user name and confirmation that the user is an employee of Licensee is supplied to Licenser, which will become an addendum to this schedule, such request will not be unreasonably withheld.

SCHEDULE C

MAINTENANCE AND SUPPORT

DEFINITIONS

1.1 "SUPPORT CALL (TIER 1)" means a reported problem in the SCPDC Software which is not affecting the Software's ability to perform substantially in accordance with the user documentation.

1.2 "SUPPORT CALL (TIER 2)" means a reported problem in the SCPDC Software, not considered as a Level I support problem as defined in 1.1 above, which causes serious disruption of a function, however the system is still serving Licensee.

1.3 "SUPPORT CALL (TIER 3)" means a reported problem in the SCPDC Software which causes the system to be down and not serving as designed, or has a significant revenue impact, with no obvious work-around.

1.4 "RESPONSE TIME" means the elapsed time between the receipt of a service call and the time when Licensor begins the Maintenance and Support, including a verbal or written confirmation to the Licensee thereof.

1.5 "RESPONSE CENTER AND CONTACT PROCEDURE" shall mean:

Address	Hours of Operation
5058 West Main Street	8:00 a.m. to 4:30 p.m.
Houma, LA 70360	

Contact Information

Tel: 1 866 957 3764
Ryan Hutchinson,
Information Technology Administrator

E-mail: support@scpdcl.org

2. **TERM AND TERMINATION.** LICENSOR's provision of Maintenance and Support to Licensee will commence on the Effective Date and will continue for an initial term of two (2) years. Maintenance and Support will automatically renew at the end of the initial term and any subsequent term for a renewal term of one (1) year unless Licensee has provided Licensor with a written termination notice of its intention not to renew the Maintenance and Support at least thirty (30) days prior to the termination expiration of the then-current term. Termination of Maintenance and Support upon failure to renew will not affect the license of the Software.

3. **MAINTENANCE AND SUPPORT SERVICES.** Maintenance and Support will be provided only with respect to use of the versions of the Software that are being supported by Licensor. Licensor will provide multi-site backup of permit issuance data for permits supported by MyPermitNow system. Licensor will provide 24-hour emergency service support, after hours cell numbers are accessed through the IVR menu, for Licensee's staff and Licensee's customers by Licensor's technical support personnel. Licensor will offer to Licensee new versions of MyPermitNow Software as they become available. Upon Licensee's request Licensor will

attempt, so long as practicable, to convert Licensee's current permit data for use with Licensors Software. Upon Licensee's request Licensors will, as long as practicable, will perform regularly scheduled exports of Licensee's permit and inspection data to Licensee's database. Within Licensors capabilities, Licensors will perform customization of Licensors Software based on Licensee's specific jurisdiction. Whenever possible, Licensors will provide features in the SCPDC Software allowing Licensee to create and search variances and define relationships between variances and permits. Licensors will provide remote support for the storage of photos, building/permits documents, inspection reports, plan review files and associated miscellaneous records. Within the capabilities of the SCPDC Software, and upon Licensee's request, Licensors will provide Licensee with customized reports. The client will be expressly forbidden from creating add-ons or feature changes to that version or disclose the source code to any third party.

3.1 LEVELS OF MAINTENANCE AND SUPPORT. Maintenance and Support is available at the following Response Times: (i) Support Call (Tier 3): response time three (3) hours, patch or work-around next day, fixed or documented in next major product release (ii) Support Call (Tier 2): response time six (6) hours, patch or work-around within five days, fixed or documented in next major product release; (iii) Support Call (Tier 1): one (1) business day, problem documented and input for consideration in next major product release.

3.2 BASIC MAINTENANCE. Basic Maintenance means that Licensors will provide during Licensors standard hours of service: (i) Updates and Minor Updates, when and if available, and related on-line Documentation, and (ii) telephone assistance with respect to the use of Software, including (a) clarification of functions and features of the Software; (b) clarification of the Documentation; (c) guidance in the use of the Software; and (d) error verification, analysis and correction to the extent possible by telephone. Licensors standard hours of service are Monday through Friday, 8:00 a.m. to 4:30 p.m., CST except for holidays as observed by Licensors.

3.3 ON-SITE ASSISTANCE. At Licensors discretion, Licensors can decide to provide Maintenance and Support at the Licensee Site. In such event Licensee will reimburse Licensors for all related traveling expenses and costs for board and lodging.

3.4 CAUSES WHICH ARE NOT ATTRIBUTABLE TO Licensors. Maintenance and Support will not include services requested as a result of, or with respect to causes which are not attributable to SCPDC Software. These services will be billed to Licensee at Licensors then-current rates. Causes which are not attributable to Licensors include but are not limited to:

3.5.1 Accident. Unusual physical, electrical or electromagnetic stress; neglect; misuse; failure or fluctuation of electric power, air conditioning or humidity control; failure of rotation media not furnished by Licensors; excessive heating; fire and smoke damage; operation of the Software with other media and hardware, software or telecommunication interfaces not meeting or not maintained in accordance with the manufacturer's specifications; or causes other than ordinary use;

3.5.2 Improper use of the Software that deviates from any operating procedures established by Licensors in the applicable Documentation;

3.5.3 Modification, alteration or addition or attempted modification, alteration or addition of the Software undertaken by persons other than LICENSOR or LICENSOR's authorized representatives;

3.5.4 Software programs made by Licensee or other parties.

4. RESPONSIBILITIES OF LICENSEE. Licensors provision of Maintenance and Support to Licensee is subject to the following:

4.1 Licensee shall provide Licensors access to Licensees personnel and Equipment during normal business hours upon reasonable notice when required to perform the maintenance and support as prescribed herein.. This access must include the ability to dial-in to the Equipment on which the Software is operating and to obtain the level of access necessary to support the Software.

4.2 Licensee shall provide supervision, control and management of the Use of the Software. In addition, Licensee shall implement procedures for the protection of information and the implementation of backup facilities in the event of errors or malfunction of the Software or Equipment.

4.3 Licensee shall document and promptly report all errors or malfunctions of the Software to Licensors. Licensee shall take all steps necessary to carry out procedures for the rectification of errors or malfunctions within a reasonable time after such procedures have been received from Licensors.

4.4 Licensee shall maintain a current backup copy of all records and transactions using the SCPDC Software.

4.5 Licensee shall properly train its personnel in the Use and application of the Software and the Equipment on which it is used.

5. MAINTENANCE FEE. Additional maintenance fees for Licensee are waived and the license fees cover all costs for maintenance and support for the original term and any renewal term of this Agreement.

6. ASSIGNMENT OF DUTIES. Licensors may assign its duties of Maintenance and Support to a third party, provided that Licensors will remain responsible for the actions of such third party. Any such assignment is subject to Licensees consent, which consent shall not be unreasonably withheld or delayed.

7. PROJECT ABANDONMENT – Should Licensors abandon development and support of MyPermit Now system and can no longer fulfill its contractual obligations pursuant to this Agreement, the last stable source code release of MyPermitNow Software will be licensed to Licensee under an open source license agreement such as for instance GNU. The specific open source license agreement would be chosen by Licensors at such time.

8. LICENSEE DATA - Upon the clients written request, Licensors agrees to provide all hosted client data to the client electronically once a calendar year in either the existing database format or CSV format. Upon Licensee request, these transfers can be automated to take place on a regular schedule. Licensors will not be held liable if technical issues disrupt the automatic scheduling of a data transfer. Licensors will take all reasonable care to safeguard and protect the Licensees data. Licensee expressly agrees to maintain on its site and under its care a current copy of Licensees permitting data.

9. ROLE OF AGENT – The Agent has no obligations or liabilities to the Licensee implied or written in the interlocal contract. The agent’s responsibilities and obligations are to Licensors only and defined specifically in a separate agreement between Licensors and the AGENT, hereinafter referred to as “CAPCOG”. The Licensors and CAPCOG agreement may provide additional services to the licensee which could include but not limited to onsite representation, support issue mediation and marketing material distribution.

Accepted:

CITY OF KILLEEN, TEXAS

By: Danielle Singh, Assistant City Manager

Date: _____

Witness

Date: _____

South Central Planning and Development Commission,
Through its agent, CAPCOG

By: Betty Voights, Executive Director

Date: _____

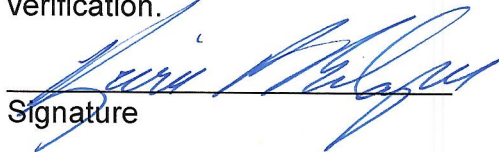


No Israel Boycott Certification

Texas Government Code, Chapter 2270, provides that a governmental entity – including a city – may not enter into certain contracts with a company for goods or services unless the contract contains a written verification that the company does not boycott Israel and will not boycott Israel during the term of the contract. The verification is specifically required when a governmental entity 1) enters into a contract with a company with ten (10) or more full-time employees, and 2) the contract is valued at \$100,000 or more to be paid wholly or partly from public funds.

“Boycott Israel” is defined in Texas Government Code 808.001 to mean refusing to deal with, terminating business activities with, or taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

By signing below, I verify that the company listed below does not boycott Israel and will not boycott Israel during the term of the contracted entered into with the City of Killeen. I further certify that I am authorized by the company listed below to make this verification.


Signature

Kevin P. Belanger
Printed Name

11/8/21
Date

South Central Planning and Development Commission
Company Name

CEO
Title