



Travis County Commissioners Court Agenda Request

Meeting Date: 7/3/2012

Prepared By/Phone Number: George Monnat, 854-9778

Elected/Appointed Official/Dept. Head: Cyd Grimes

Commissioners Court Sponsor: Judge Biscoe

Agenda Language:

Approve interlocal agreement with South Central Planning and Development Commission for use of MyPermitNow software.

- **Purchasing Recommendation and Comments:** This procurement action meets the compliance requirements as outlined by the statutes.

The Travis County Transportation and Natural Resources department and the Travis County Fire Marshal's office have jointly requested to enter into an interlocal agreement with the Capital Area Council of Governments ("CAPCOG"), as an agent to the South Central Planning and Development Commission of Louisiana ("SCPDC"), for a nonexclusive, nontransferable, royalty-bearing license of SCPDC's MyPermit Now, MyProjectNow, MyCodeEnforcementNow, MyAddressNow, and MyGovernmentOnline software programs. These products provide the Public Internet access to apply for various County permits and provide the departments with data collection and management functionality. The license provides electronic permit tracking which will speed the review, inspection and permitting process.

- **Contract-Related Information:**

Award Amount: \$41,145.00

Contract Type: Interlocal

Contract Period: Two year term, with annual one-year renewal options

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, Cheryl.Aker@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.

➤ **Special Contract Considerations:**

- Award has been protested; interested parties have been notified.
- Award is not to the lowest bidder; interested parties have been notified.
- Comments: TNR and FM will request associated fee increases for the respective permits under a separate Court agenda item.

➤ **Funding Information:**

- Purchase Shopping Cart in SAP:
- Funding Account(s): TNR 300000190 / FM 300000188
- Comments:

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, Cheryl.Aker@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.

**INTERLOCAL CONTRACT
FOR LICENSING SCPDC SOFTWARE**

Sec. 1. Parties and Purpose

1.1. The Capital Area Council of Governments ("CAPCOG" or "Agent") 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 Texas Local Government Code, as amended, and is an authorized signatory agent for Licensor.

1.2. Travis County, Texas (the "County" or the "Licensee") is a political subdivision of the State of Texas.

1.3. The South Central Planning and Development Commission ("Licensor" or "SCPDC") is a regional planning commission and political subdivision of the State of Louisiana, domiciled in Terrebonne Parish. SCPDC is a regional planning and development commission established in 1973 pursuant to Louisiana Revised Statutes §33:131, et seq. and §33:140.61, et seq. These statutes allow SCPDC's member governmental entities to come together through SCPDC to provide long range planning, act as a state and federal liaison, study and provide guidance regarding current issues affecting government, and provide services to businesses and citizens.

1.4. SCPDC has developed MyPermitNow, MyProjectNow, MyAddressNow, Inspection Anywhere, and MyGovernmentOnline software that simplifies and facilitates the permitting process for members of the public as well as governmental entities by allowing 24-hour online access for:

- (a) members of the public to:
 - (1) electronically submit permit applications and associated documents to the County for review;
 - (2) track the status of permit applications, including comments, mark-ups, and other relevant information; and
 - (3) schedule inspections and receive real-time notification of the results via e-mail and phone messaging; and
- (b) governmental employees or officials to:
 - (1) electronically review, track, and store permit applications and associated documents; and
 - (2) obtain customized reports regarding permit applications and associated documents.

1.5 Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act, authorizes local governments, such as the County, to contract with other local governments, including the political subdivisions of another state, to perform governmental functions and services.

1.6 The County desires to engage SCPDC to license certain software developed by SCPDC and to provide certain professional services, and maintenance and support services relating thereto.

1.7 This interlocal agreement (this "Agreement") is entered into between the County and SCPDC (together, the "Parties") under Chapter 791 of the Texas Government Code and describes the terms and conditions pursuant to which SCPDC will license to the County the use of, and provide support for, SCPDC Software.

1.8 CAPCOG has been granted a limited power of attorney by SCPDC to execute this Agreement on SCPDC's behalf, as evidenced by the South Central Planning and Development Commission Independent Sales and Support Representative Agreement between SCPDC and CAPCOG, a copy of which is attached hereto as Exhibit 1.

1.9 To the extent that the terms of this agreement and the laws of the State of Louisiana do not conflict, the Parties intend to conform this Agreement in all respects with the Interlocal Cooperation Act, Texas Government Code Section 791.001 et seq.;

1.10 Each of the Parties confirms that it has the authority and the ability to enter into this Agreement and to perform its obligations under this Agreement without the further approval or consent of any other person or entity.

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:

(a) drawings, benchmark tests, specifications, trade secrets, object code and machine-readable copies of the Software, source code relating to the Software, and any other trade secret or proprietary information in the Software, the Documentation, or other information supplied to the County by SCPDC;

(b) information provided by the County to SCPDC and clearly marked as "confidential information", including all items defined as "confidential information" in any other agreement between the County and SCPDC whether executed prior to or after the date of this Agreement; and

(c) information provided by members of the public that is made confidential by, or is prohibited from disclosure pursuant to, any applicable state or federal rule, regulation, or case law.

Notwithstanding the foregoing, Confidential Information does not include information that: (a) becomes public other than as a result of a disclosure by the County in breach hereof; (b) becomes available to the County on a non-confidential basis from a source other than SCPDC, which is not prohibited from disclosing such information by

obligation to SCPDC; (c) is known by the County prior to its receipt from SCPDC without any obligation of confidentiality with respect thereto; or (d) is developed by the County independently of any disclosures made by SCPDC.

2.2 "DOCUMENTATION" means any on-line help files, instruction manuals, operating instructions, user manuals, and specifications provided by SCPDC which describe the use of the Software and which either accompany the Software or are provided to the County at any time in connection with this Agreement.

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

2.4 "EQUIPMENT" means the computer system, including peripheral equipment and operating system software, specified in Schedule B, which is attached hereto and made a part hereof.

2.5 "MAJOR AND MINOR UPDATES" means updates, if any, to the Software or Documentation, and shall be considered, as applicable, "Software" or "Documentation." 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). SCPDC 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 the County's web site, at which the County and its customers are entitled to Use the Software.

2.7 "SOFTWARE" means the computer software programs specified in Schedule A, which is attached hereto and made a part hereof, and otherwise provided for the County to use pursuant to this Agreement, and which, among other things, will:

- (a) enable members of the public to:
 - (1) electronically submit permit applications and associated documents to the County for review;
 - (2) track the status of permit applications, including comments, mark-ups, and other relevant information; and
 - (3) schedule inspections and receive real-time notification of the results via e-mail and phone messaging; and
- (b) enable County officials and County staff to:
 - (1) electronically review, track, and store permit applications and associated documents; and
 - (2) obtain customized reports regarding permit applications and associated documents.

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

2.9 "PERMIT" means 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 will not be considered a single permit when calculating funds owed SCPDC pursuant to the terms of the Cooperative Endeavor Use Agreement set forth in Schedule B.

2.10 For billing purposes only under the MyProjectNow—Code Enforcement Module listed in Schedule A, an "ACTIONABLE PROJECT" means any project or case that is tracked by a unique project number and that, after the effective date of this Agreement, has had either a work order assigned to it by the County or a photograph or other miscellaneous document uploaded and appended to it by the County.

2.11 For billing purposes only under the MyProjectNow—Code Enforcement Module listed in Schedule A, a "NON-ACTIONABLE PROJECT" means any project or case that is tracked by a unique project number and that, after the effective date of this Agreement, has not had a work order assigned to it by the County or had a photograph or other miscellaneous document uploaded and appended to it by the County. The County's entry of comments as well as other information as to why no action is being taken on a project or case will not change the status of the project or case from Non-actionable to Actionable. Reporting on Non-actionable Projects will also not change their status to Actionable. Actionable Projects and cases will not be included in any calculation regarding the annual permit volume or license fee.

2.12. "Local Configuration" means any refinement, enhancement, or other customization of the Software that SCPDC agrees to make to the Software at the request of the County to address specific needs or requests of the County.

2.13 "License Fee(s)" means the Software license fee set forth in Schedule A.

3. LICENSE, DELIVERABLES AND COPIES

3.1 LICENSE GRANT.

(a) Subject to the terms of this Agreement, SCPDC grants to the County a nonexclusive, nontransferable, royalty-bearing user license (the "License") during the term of this Agreement to use the Software, through Internet access only, internally on one or more servers controlled by or on behalf of the County solely for purposes of using the SCPDC's products known as MyPermitNow, MyProjectNow, MyAddressNow, MyGovernmentOnline, and Inspection Anywhere. SCPDC represents that it is

authorized to grant this License to the County. The scope of the foregoing License encompasses the County's internal use of the Software in connection with the following purposes: (1) enabling members of the public to (A) electronically submit permit applications and associated documents to the County for review, (B) track the status of permit applications, and (C) schedule inspections and receive real-time notification of inspection results via e-mail and phone messaging; and (2) enabling County employees and officials to: (A) electronically receive, track, process, manage, research, and store applications for County permits; and (B) obtain customized reports regarding permit applications and associated documents. The License expressly excludes: any sublicensing of the Software and uploading or otherwise transferring, or providing direct access to, the Software to any third party without SCPDC's prior written consent. This exclusion prohibits access by any third party to the Software through any website other than the County's website or a website hosted by SCPDC for any purposes other than (A) electronically submitting permit applications and associated documents to the County for review, (B) tracking the status of permit applications, and (C) scheduling inspections and receiving real-time notification of inspection results via e-mail and phone messaging. The License granted hereunder includes the use and duplication of Documentation in connection with Use of the Software.

(b) OWNERSHIP. SCPDC solely owns all right, title and interest in and to the Software, and reserve all rights therein not expressly granted under this Agreement. This License transfers to the County 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), the County may not directly or through any third party (a) transfer or sublicense, in whole or part, any copies of the Software to any third party; (b) modify, decompile, reverse engineer, or otherwise attempt to access the source code of the Software; or (c) copy the Software, except such copies of the records as necessary for reasonable and customary back-up and disaster recovery purposes. The County will not delete or alter the copyright, trademark or other proprietary rights notices of SCPDC and its licensors included with the Software which will be delivered to the County, and will reproduce such notices on all copies of the SCPDC Software. If derivative works of the Software are prepared by or on behalf of the County based on suggestions or requests by the County, SCPDC will solely own such modifications.

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

(c) Notwithstanding the inclusion of the County's customers in the class of allowed users, SCPDC's affirmative obligations will be limited to the County.

3.2 DELIVERABLES.

(a) On the Effective Date of this Agreement, SCPDC shall issue to County a **USER CREATION** form in accordance with Schedule B of this Agreement so that the County can begin in-house training regarding the Software.

(b) Within 90 days after the Effective Date of this Agreement (or upon such other schedule as the Parties may mutually agree), SCPDC shall complete initial Local Configuration of the Software.

(c) Within three business days after receiving written notification from the County that it is ready to "go live" with the Software, SCPDC shall enable members of the public to do the following, 24 hours a day and 7 days a week:

- (1) electronically submit permit applications and associated documents to the County for review by using the "Customer Portal Login" from the MyPermitNow website;
 - (2) track the status of permit applications submitted to the County, including comments, mark-ups, and other relevant information; and
 - (3) schedule inspections with the County and receive real-time notification of the results via e-mail and phone messaging; and
- (b) enable County officials and County staff to do the following, 24 hours a day and 7 days a week:
- (1) electronically review, track, and store permit applications and associated documents using the "Jurisdiction Portal Login" from the MyPermitNow website; and
 - (2) obtain customized reports regarding permit applications and associated documents.

3.3 COPIES. The License includes the right to copy and reprint the Documentation, or portions thereof, for use with the Software in accordance with the rights granted hereunder, for backup/archival purposes, internal County intranet posting and other uses consistent with the License. Whenever the County copies or reproduces all or any part of the Documentation, all titles, trademark symbols, copyright symbols and legends, and other proprietary markings must be reproduced.

3.4 SCPDC will perform, at no cost to the County, Local Configuration of the Software based on the County's specific jurisdiction and needs. SCPDC will provide features in the Software allowing the County to create and search variances and define relationships between variances and permits. SCPDC will provide remote support for the storage of photos, building/permits documents, inspection reports, plan review files and associated miscellaneous records. Upon the County's request, SCPDC will provide the County with customized reports at any time and without any cost to the County. SCPDC shall endeavor and take reasonable and prudent steps to ensure that the Local Configuration of the Software will be compatible with any on-line payment system used by the County.

4. LICENSE RESTRICTIONS. The County 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 the 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 SCPDC's prior written consent.

5. LICENSE FEE

5.1 LICENSE FEE. In consideration of the License granted pursuant to Section 3.1, the County agrees to pay SCPDC the License Fee specified in Schedule A. The County shall pay SCPDC a fee based on the County's use of the Software, determined according to the terms set forth in Schedule A. It is expressly agreed that the County will not hide transactions that are the basis of fees paid to SCPDC with the intention of avoiding the responsibility of paying fees to SCPDC for the term of this Agreement. Should SCPDC determine that the County has violated this provision, SCPDC, at its expense and on reasonable notice, may audit the County's records during regular business hours at the County's facilities. If an audit reveals underpayment of fees due under this Agreement, all such amounts will be promptly paid with interest in accordance with applicable law.

5.2 [Intentionally deleted]

5.3 [Intentionally deleted]

6. MAINTENANCE AND SUPPORT. Licensee agrees to pay Maintenance Fees according to Schedule C, attached hereto and made a part hereof for all purposes, for each Site as specified in Schedule A, unless the Maintenance Fees are specifically waived in Schedule C. For so long as the County is current in the payment of the License Fee all maintenance fees, with respect to each Site, Licensee, will be entitled to Maintenance and Support for each Site as set forth in Schedule C. Failure to pay maintenance fees with respect to any Site, if such fees are not waived, shall be deemed a material breach of this Agreement and in such event SCPDC shall have the right to terminate the rights granted hereunder with respect to such site for the term of this Agreement. If this Agreement is terminated pursuant to this Section, SCPDC will transfer all data and permit records to the County in accordance with Section 10.4.

7. LIMITED WARRANTY AND LIMITATION OF LIABILITY

7.1 LIMITED WARRANTY. SCPDC warrants that, for the term of this Agreement, commencing on the Effective Date (the "Warranty Period"), the Software will perform substantially in accordance with the Documentation under normal use. If during the Warranty Period the Software does not perform as warranted (a "Non-Conformance"), SCPDC 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, SCPDC shall terminate this Agreement and refund to the County 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 the County only. The warranty will apply only if:

(a) the Software has been properly used at all times 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 the County, except pursuant to the authorized Use of the Software specified in Schedule A, and except as authorized in writing by SCPDC; and

(c) Licensee has not requested modifications, alterations or additions to the Software that SCPDC reasonably believes, and has informed the County that it reasonably believes, will cause the Software to deviate from the Documentation.

7.2. ADDITIONAL WARRANTIES

(a) SCPDC warrants that it possesses all of the right, title, interest and authority to enter into this Agreement with the County. SCPDC warrants that it possesses all of the right, title, interest in and to the Software and Documentation and that use of the Software and Documentation as contemplated by this Agreement will in no way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, or other intellectual property or proprietary right of any third party.

(b) SCPDC warrants and represents that it shall endeavor to take reasonable and prudent steps to ensure that the Software will be free of any information technology virus, software or firmware application locks or unauthorized code. "Unauthorized code" includes any programs or data that: (i) destroys, erases, damages or otherwise disrupts the normal operation of the Software; or (ii) allows for unauthorized access to the Software or to the County's computers, networks, software, and information; or otherwise causes the Software to fail to function in accordance with the description set forth in Section 2.7.

(c) SCPDC warrants that no lawsuit or claim concerning the Software is currently pending.

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

7.4 DISCLAIMER. EXCEPT AS SET FORTH ABOVE AND EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, SCPDC 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. SCPDC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SOFTWARE, DOCUMENTATION

AND SAID OTHER MATERIALS AND SERVICES, AND WITH RESPECT TO THE FOREGOING. IN ADDITION, SCPDC 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-SCPDC SOFTWARE THAT CHANGE, OR ARE ABLE TO CHANGE THE DATA MODEL OF THE SOFTWARE.

7.5 LIMITATION OF LIABILITY. IN NO EVENT WILL SCPDC 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 SCPDC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, SCPDC WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN DELIVERY OR FURNISHING THE SOFTWARE OR SAID SERVICES. SCPDC'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, EXCEPT FOR SCPDC'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS DESCRIBED BELOW AND EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, EXCEED THE LICENSE FEE PAID BY LICENSEE TO SCPDC UNDER THIS AGREEMENT.

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

7.7 [Intentionally deleted]

8. INDEMNIFICATION

8.1 INFRINGEMENT INDEMNITY. SCPDC represents and warrants that (i) all applicable copyrights, patents, trade secrets, licenses and other proprietary and intellectual property rights that may exist on materials used in this Agreement have been adhered to and (ii) County shall not be liable for any infringement of those rights and any rights granted to County shall apply for the duration of this Agreement. SCPDC shall at its expense, defend or settle any claim, action, or allegation brought against County that the Software infringes any patent, copyright, trade secret or other proprietary right of any third party and shall pay any final judgments awarded or settlements entered in the action; provided that the County gives prompt written notice to SCPDC of any such claim, action or allegation of infringement and gives SCPDC the authority to proceed as contemplated herein. SCPDC will have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion, and the County may not settle or compromise such claim, action or

allegation, except with prior written consent of SCPDC. The County shall give such assistance and information as SCPDC may reasonably require to settle or oppose such claims. In the event any such infringement, claim, action or allegation is brought or threatened, SCPDC may, at its sole option and expense:

(a) procure for the County the right to continue Use of the Software or infringing part thereof; or

(b) modify or amend the Software or infringing part thereof, or replace the Software or infringing part thereof with other software having substantially the same or better capabilities; or, if neither of the foregoing is commercially practicable,

(c) terminate this Agreement after providing the County 30 days' written notice and repay to the County a portion, if any, of the License Fee and maintenance fees equal to the amount paid by Licensee less one-twenty-fourth (1/24) thereof for each month or portion thereof that this Agreement.

8.2 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 SCPDC or SCPDC's authorized representative.

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

8.4 [Intentionally deleted]

9. CONFIDENTIALITY

9.1 CONFIDENTIAL INFORMATION. Each party acknowledges that some of the Confidential Information may constitute 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 the County 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 Louisiana Revised Statute 44:1 et seq., (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. Notwithstanding the foregoing, disclosure of any information exchanged between SCPDC and the County or

any of their respective officials, employees, agents, or representatives in connection with this Agreement shall be subject to the provisions of the Texas Public Information Act (Texas Government Code Chapter 552) and all legal authorities relating thereto, including but not limited to opinions, decisions, and letter rulings issued by the Texas Attorney General's Office. SCPDC acknowledges that the County has a legal responsibility to promptly respond to public information requests, and SCPDC agrees to notify the County no later than two business days after SCPDC receives a request for information which SCPDC otherwise collects, assembles, or maintains for the County in connection with this Agreement. SCPDC further agrees that it will not release any information it collects, assembles, or maintains on behalf of the County without the express written permission of the County. The Parties agree to promptly notify each other of any public information request it receives relating to this Agreement.

9.2 INJUNCTIVE RELIEF. In the event of actual or threatened breach of the provisions of Section 9.1, 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.

10. TERM AND TERMINATION

10.1 TERM. This Agreement will take effect on the Effective Date and will remain in force for a period of two years (the "Initial Term"). The Agreement will automatically renew for 12-month periods following the end of the Initial Term unless terminated in accordance with this Agreement.

10.2 TERMINATION. This Agreement may be terminated:

(a) By the County.

- (1)** Should there be discovered a serious defect or flaw in the Software that prevents the County from using the Software to perform its governmental functions as contemplated by this Agreement and its exhibits (a "Termination Event"), the County shall notify SCPDC of the issue. If the issue is not resolved within the time period set forth in Schedule C for Tier 3 Support Calls (or within the time-frame mutually agreed upon in writing by the Parties), the Agreement will terminate on the 1st of the following month.
- (2)** The County reserves the right to terminate this Agreement for reasons other than default by SCPDC, including for any reason deemed by the Travis County Commissioners Court to serve the public interest, or resulting from any governmental law, ordinance, regulation, or court order, by delivering to SCPDC a written notice (a "Notice of Termination"), which will take effect on the tenth day following receipt by SCPDC ("Termination for Convenience"). Termination for Convenience will not be made when termination is authorized under any other provisions of this Agreement and Termination for Convenience will not be taken with the intention of

awarding the same or similar contract requirements to another source.

- (3) In addition, the County may terminate this Agreement in the event that SCPDC commits a material breach of this Agreement (a "Termination Event") and fails to cure such material breach within 30 days after receiving written notice of the same.
- (4) All notices for corrective action, breach, default or show cause shall be issued by the Travis County Purchasing Agent or Travis County Attorney only and all replies shall be made in writing to the Travis County Purchasing Agent at the address provided herein. Notices issued by or to anyone other than the Travis County Purchasing Agent or Travis County Attorney shall be null and void, and shall be considered as not having been issued or received.
- (5) The County reserves the right to enforce the performance of this Agreement in any manner prescribed by law in case of default and may contract with another party with or without competition or further notification to SCPDC.
- (6) In the event of termination for default, neither the County nor its agents or representatives shall be liable for loss of any profits anticipated to be made hereunder.

(b) By SCPDC:

Upon written notice to the County if any of the following events ("Termination Events") occurs, provided that no such termination will entitle the County to a refund of any portion of the License Fee or maintenance fees: (i) the County fails to pay any undisputed amount due to SCPDC within thirty (30) days after SCPDC gives the County written notice of such non-payment; (ii) the County 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 thirty (30) days after SCPDC gives the County written notice of such breach; or (iii) the County becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes.

10.3 EFFECT OF TERMINATION. Notwithstanding any provision to the contrary, if any Termination Event occurs, termination will become effective on the date set forth in the written notice of termination. Termination of this Agreement will not affect the provisions regarding the County's or SCPDC's treatment of Confidential Information, provisions relating to the payment of amounts due, or provisions limiting or disclaiming SCPDC's liability, which provisions will survive termination of this Agreement. In addition to the foregoing, the following provisions will also survive termination of this Agreement: Section 2 (Definitions), Section 7.2 (Additional Warranties), Section 8 (Indemnification), Section 9 (Confidentiality), Section 10.3 (Effect of Termination), Section 10.4, Section 11 (Non-Assignment), and Section 13 (Miscellaneous). Within fourteen (14) days after the date of termination or discontinuance of this Agreement for any reason whatsoever, the County 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 that was obtained from SCPDC. Upon termination of this Agreement, the County shall cause the SCPDC Software to be removed from all computer units, including desktops and laptops, in the County's office and from the computer units of third party contractors performing work for the County. The County shall furnish SCPDC with a certificate signed by the County Executive of the Travis County Transportation and Natural Resources Department verifying that the same has been done.

- 10.4 In the event of the termination or nonrenewal of this agreement,
- (a) SCPDC warrants that the information stored by SCPDC as a result of the County's use of MyPermitNow or any other SCPDC Software will be provided on disk to the County, when requested, for up to 4 months after termination or nonrenewal.
 - (b) SCPDC will return to the County any Confidential Information that SCPDC obtained from the County as a result of this Agreement, and
 - (c) if requested by the County, SCPDC will destroy all information obtained from the County and/or members of the public as a result of this Agreement, and SCPDC will provide written certification to the County that the information has been destroyed.

11. **NON-ASSIGNMENT.** Neither party may assign this Agreement or any rights under this Agreement, 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. No official, employee, representative, or agent of the County has the authority to approve any assignment under this Agreement unless that specific authority is expressly granted by the Travis County Commissioners Court.

12. **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 in 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.

The address for SCPDC for all purposes is:

South Central Planning and District Commission
5058 West Main St.
Houma, LA 70360

The address of the County for all purposes is:

Cyd V. Grimes, C.P.M., CPPO (or successor)
Travis County Purchasing Agent
P.O. Box 1748
Austin, Texas 78767

With a copy to:

Mr. Steven M. Manilla, P.E. (or successor)
County Executive
Transportation and Natural Resources Department
P.O. Box 1748
Austin, Texas 78767

And to:

The Honorable David Escamilla (or successor)
Travis County Attorney
P.O. Box 1748
Austin, Texas 78767
Attn: File No. 291.93

13. MISCELLANEOUS

13.1 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 SCPDC to disable the Software or make the Software inaccessible to the County after the Software is installed; or (ii) to the best of SCPDC's knowledge, any computer "virus", "worm" or similar programming routine.

13.2 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.

13.3 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.

13.4 SEVERABILITY. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

13.5 STANDARD TERMS OF LICENSEE. No terms, provisions or conditions of any purchase order, acknowledgment or other business form that the County 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 SCPDC to object to such terms, provisions or conditions.

13.6 AMENDMENTS TO THIS AGREEMENT. This Agreement may not be amended, except by a writing signed by both parties. IT IS EXPRESSLY ACKNOWLEDGED THAT NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS AGREEMENT EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE TRAVIS COUNTY COMMISSIONERS COURT.

13.7 SCPDC'S PRIOR CONSENT. Unless expressly provided otherwise in this Agreement, any prior consent of SCPDC that is required before the County may take an action may be granted or withheld in SCPDC's sole and absolute discretion.

13.8 EXPORT OF SOFTWARE. The County may not export or re-export the SCPDC Software without the prior written consent of SCPDC and without the appropriate United States and foreign government licenses.

13.9 [Intentionally deleted]

13.10 PUBLIC ANNOUNCEMENTS. The County acknowledges that SCPDC may desire to use its name in press releases, product brochures and financial reports indicating that the County is a licensee of SCPDC, and the County agrees that SCPDC may use its name in such a manner. The County reserves the right to review any use of its name and to withhold permission, which permission will not reasonably be withheld.

13.11 DISPUTE RESOLUTION. The parties have entered into this Agreement voluntarily and in good faith. As a result, if any dispute, claim or controversy ("dispute") arises between them, unless otherwise provided in this Agreement, they agree that they will first attempt to resolve the dispute by entering into mediation with a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation are to remain confidential unless both parties agree, in writing, to waive the confidentiality.

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

13.13 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."

13.14 TAXPAYER IDENTIFICATION. SCPDC shall provide the County with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification, that is completed in compliance with the Internal Revenue Code and its rules and regulations before any Agreement funds are payable.

13.15 PAYMENTS. Payment shall be made no later than 30 days from the date of invoice and shall be made by check or warrant by the County upon satisfactory delivery and acceptance of products and services and submission of an invoice to the following address: Travis County Auditor's Office, P.O. Box 1748, Austin, Texas 78767, with a copy to: Travis County Transportation and Natural Resources Department, P.O. Box 1748, Austin, Texas 78767.

As a minimum, invoices shall include:

- (i) name, address, and telephone number of SCPDC and similar information in the event payment is to be made to a different address;
- (ii) Travis County contract or Purchase Order number;
- (iii) Identification of products or services as outlined in this Agreement;
- (iv) quantity or quantities, applicable unit prices, total prices, and total amount; and
- (v) any additional payment information called for by this Agreement.

County will not pay invoices that are in excess of the amount authorized by the Purchase Order. Payment shall be deemed to have been made on the date of mailing of the check or warrant. For purposes of payment discounts, time will begin upon satisfactory delivery of products and services and/or submission of

acceptable invoice, whichever is last. Partial payments will not be made unless specifically requested and approved by County prior to Agreement award. Accrual and payment of interest on overdue payments shall be governed by TEX. GOV'T CODE ANN., ch. 2251.

- 13.16 CERTIFICATE OF ELIGIBILITY.** SCPDC certifies that at the time of executing this Agreement, SCPDC is not on the federal government's list of suspended, ineligible, or debarred contractors. If SCPDC is placed on the list during the term of this Agreement, SCPDC shall notify the Travis County Purchasing Agent. False certification or failure to notify may result in termination of this Agreement for default.
- 13.17 ACCESS TO RECORDS.** SCPDC agrees to maintain and make available all books, documents, and other evidence pertinent to the costs and expenses of this Agreement for inspection, audit or reproduction by any authorized representative of the County to the extent this detail will properly reflect these costs and expenses. These include all costs, both direct and indirect costs, cost of labor, material, equipment, supplies, and services, and all other costs and expenses of whatever nature for which reimbursement is claimed under this Agreement. All required records shall be maintained until an audit is completed and all required questions arising therefrom are resolved, or three years after completion of the Agreement term, whichever occurs first; however, the records shall be retained beyond the third year if an audit is in progress or the findings of a completed audit have not been resolved satisfactorily.
- 13.18 FORFEITURE OF AGREEMENT.** SCPDC will forfeit all benefits of this Agreement and the COUNTY will retain all performance by SCPDC and recover all consideration, or the value of all consideration, paid to SCPDC pursuant to this Agreement if:
- (i) SCPDC was doing business or had done business during the 365-day period immediately prior to the date of execution of this Agreement with one or more Key Contracting Persons; or
 - (ii) SCPDC does business with a Key Contracting Person after the date of execution of this Agreement and prior to full performance of this Agreement.
- 13.18.1** "Was doing business" and "has done business" mean:
- (a) Paying or receiving in any calendar year any money or valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or for purchase of any property or property interest, either real or personal, either legal or equitable; or

- (b) **Loaning or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;**
- (c) **but does not include:**
 - (1) **any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the general public;**
 - (2) **any financial services product sold to a Key Contracting Person for personal, family, or household purposes in accordance with pricing guidelines applicable to similarly situated individuals with similar risks as determined by SCPDC in the ordinary course of its business; or**
 - (3) **a transaction for a financial service or insurance coverage made on behalf of SCPDC if SCPDC is a national or multinational corporation by an agent, employee or other representative of SCPDC who does not know and is not in a position that he or she should have known about the Agreement.**

13.18.2 "Key Contracting Person" means any person or business listed in listed in Attachment 1 to Attachment A, attached hereto and made a part hereof. In Attachment A, "Contractor" refers to SCPDC.

13.18.3 This section may be waived by the Travis County Commissioners Court pursuant to Section 3(g) of the Travis County Ethics Policy.

13.19 SCPDC represents and warrants that SCPDC:

- (a) **is a duly qualified, capable, and otherwise bondable governmental entity,**
- (b) **is not in receivership or contemplating same,**
- (c) **has not filed for bankruptcy, and**
- (d) **is not currently delinquent with respect to payment of property taxes within Travis County.**

13.20 DISPUTES AND APPEALS. The Purchasing Agent acts as the County representative in the issuance and administration of this Agreement in relation to disputes. Any document, notice, or correspondence not issued by or to the Purchasing Agent or other authorized County person, in relation to disputes is void unless otherwise stated in this Agreement. If SCPDC does not agree with any document, notice, or correspondence issued by the Purchasing Agent, or other authorized County person, SCPDC must submit a written notice to the Purchasing Agent within thirty calendar days after receipt of the document, notice, or correspondence, outlining the exact point of disagreement in detail. If

the matter is not resolved to SCPDC's satisfaction, SCPDC may submit a written Notice of Appeal to the Commissioners Court, through the Purchasing Agent, if the Notice is submitted within thirty calendar days after receipt of the unsatisfactory reply. SCPDC then has the right to be heard by Commissioners Court.

- 13.21 **CONTRACT ADMINISTRATOR.** For purposes of monitoring performance, establishing requirements, approving and coordinating schedules, users, and equipment, the county department named below shall act as contract administrator on behalf of Travis County:

Stacey Scheffel
Travis County Transportation and Natural Resources Department
(or successor or designee)
P.O. Box 1748
Austin, Texas 78767
(512) 854-7565

- 13.22 **FUNDING OUT.** Despite anything to the contrary in this Agreement, if, during budget planning and adoption, the Travis County Commissioners Court fails to provide funding for this Agreement for the following fiscal year of Travis County, The County may terminate this Agreement after giving SCPDC 30 days' written notice that this Agreement is terminated due to the failure to fund it.
- 13.23 **PROPERTY TAXES.** Despite anything to the contrary in this Agreement, if SCPDC is delinquent in payment of Travis County property taxes at the time of providing goods or services, SCPDC hereby assigns the portion of the amount owing to it under this Agreement that is equal to the amount SCPDC is delinquent in property tax payments to the Travis County Tax Assessor-Collector for the payment of the delinquent taxes.
- 13.24 **ASSIGNMENT OF CONTRACT OR MORTGAGE.** SCPDC must not transfer or assign any part of or right or interest in this Agreement, directly or indirectly, voluntary or involuntary without the express written approval of the Travis County Commissioners Court. SCPDC must not execute any mortgage, or issue any bonds, shares of stock, or other evidence of interest in any of the County's buildings.
- 13.25. **CIVIL RIGHTS/ADA COMPLIANCE.** SCPDC must provide all services and activities required in a manner that would comply with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and with the provisions of the Americans With Disabilities Act of 1990, Public Law 101-336 [S.933] as if SCPDC were an entity bound to comply with these laws. SCPDC must not discriminate against any employee or applicant for employment based on race, religion, color, sex, national origin, age or handicapped condition.

- 13.26. **GRATUITIES.** The County may terminate this Agreement if it is found that gratuities of any kind, including entertainment, or gifts were offered or given by SCPDC or any agent or representative of SCPDC, to any County Official or employee with a view toward securing favorable treatment with respect to this Agreement. If this Agreement is terminated by the County pursuant to this provision, the County will be entitled, in addition to any other rights and remedies, to recover from SCPDC at least three times the cost incurred by SCPDC in providing the gratuities.
- 13.27 **NO WAIVER OF IMMUNITY.** It is expressly understood and agreed by the Parties that neither the execution of this Agreement nor any conduct of any representative of SCPDC or the County relating to this Agreement will be considered to waive, nor will it be deemed to have waived, any immunity or defense that would otherwise be available to that entity against claims arising in the exercise of its governmental powers and functions, nor will it be considered a waiver of sovereign immunity to suit.
- 13.28. This Agreement is not intended, nor may it be construed, to confer any benefits, rights, or remedies upon any person not a party hereto.
- 13.29 **SUBCONTRACTS.** SCPDC shall not enter into any subcontracts for any service or activity relating to the performance of this Agreement without the prior written approval or the prior written waiver of this right of approval from County. It is acknowledged by SCPDC that no officer, agent, employee or representative of the County has the authority to grant such approval or waiver unless expressly granted that specific authority by the Travis County Commissioners Court.
- 13.30 **COMPUTATION OF TIME.** When any period of time is stated in this Agreement, the time shall be computed to exclude the first day and include the last day of period. If the last day of any period falls on a Saturday, Sunday, or a day that Travis County has declared a holiday for its employees, these days shall be omitted from the computation. All hours stated in this Agreement are stated in Central Standard Time from 2:00 o'clock a.m. on the first Sunday in November until 2:00 o'clock a.m. on the second Sunday of March and in Central Daylight Saving Time from 2:00 o'clock a.m. on the second Sunday of March until 2:00 o'clock a.m. on the first Sunday of November.
- 13.31 **GENDER AND NUMBER.** Words of any gender in this Agreement shall be construed to include any other gender and words in either number shall be construed to include the other unless the context in this Agreement clearly requires otherwise.
- 13.32 SCPDC must comply with all federal, state, and local laws, regulations, ordinances, and orders relating in any way to this Agreement to the extent same does not conflict with any of the terms of the conditions herein or the laws of the State of Louisiana.

13.33 INTERPRETATION. In the event of any dispute over its meaning or application, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against either party.

13.34. INCORPORATION OF ATTACHMENTS. The attachments, schedules, and exhibits referred to in this Agreement are incorporated by reference as if set forth verbatim.

13.35 CONFLICT OF INTEREST QUESTIONNAIRE. SCPDC agrees to file a Conflict of Interest Questionnaire as contemplated by Chapter 176 Texas Local Government Code. As such, SCPDC agrees to file the completed Conflict of Interest Questionnaire with the Travis County Clerk, Recording Division, 5501 Airport Blvd., Austin, Texas 78751. SCPDC further agrees to file an updated, completed questionnaire upon reasonable request. SCPDC notes that access to a filed Questionnaire will be available on the official Travis County Internet website. However, SCPDC notes that there is no requirement that the County release information that is excepted from disclosure. As between the County and SCPDC, SCPDC shall be solely responsible for the preparation of its Conflict of Interest Questionnaire, the accuracy and completeness of the content contained therein.

Each person signing this Agreement hereby warrants that he or she has been fully authorized by the governing body of his or her respective organization to:

- (a) Execute this Agreement on behalf of the organization, and
- (b) Validly and legally bind the organization to all terms, performances, and provisions of this Agreement

IN WITNESS WHEREOF, the parties have executed this Agreement.

TRAVIS COUNTY, TEXAS

SOUTH CENTRAL PLANNING AND
DEVELOPMENT COMMISSION THROUGH
ITS AGENT, CAPCOG

By:

By:

Samuel T. Biscoe, County Judge

Betty Voights, CAPCOG Executive Director

Date

Date

Witness

Date:

**SCHEDULE A
INTERLOCAL CONTRACT
South Central Planning and Development Commission and Jurisdiction
Government**

SOFTWARE AND LICENSE FEE

A. SOFTWARE USE

The License authorizes Travis County to use of SCPDC's My Permit Now System, Number 3.0 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. Inspections Anywhere System, Number 3.0, Standard Configuration.

B. CONFIGURATION

Authorized configuration will support delivery of unlimited numbers of visits per day to the County's web site.

C. 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.

Annual Permit Volume	Rate Per Permit	Monthly	Annual	Overage Rate
0 - 100	\$6.75	\$56.25	\$675.00	\$7.75
101 - 500	\$6.25	\$260.42	\$3,125.00	\$7.25
501 - 1000	\$6.00	\$500.00	\$6,000.00	\$7.00
1001 - 2000	\$5.75	\$958.33	\$11,500.00	\$6.75
2001 - 4000	\$5.50	\$1,833.33	\$22,000.00	\$6.50
4001 - 6000	\$5.00	\$2,500.00	\$30,000.00	\$6.00
6001 - 8000	\$4.75	\$3,166.67	\$38,000.00	\$5.75
8001 - 10000	\$4.50	\$3,750.00	\$45,000.00	\$5.50
10001 - 12000	\$4.25	\$4,250.00	\$51,000.00	\$5.25
12001 - 14000	\$4.00	\$4,666.67	\$56,000.00	\$5.00
14001 - 16000	\$3.75	\$5,000.00	\$60,000.00	\$4.75
16001 - 18000	\$3.50	\$5,250.00	\$63,000.00	\$4.50
18001 - 30000	\$2.17	\$5,416.67	\$65,000.00	No Overage

ANNUAL PERMIT VOLUME FROM 18001 TO 30,000 PERMITS IS A FLAT RATE OF \$5,416.67 A MONTH.

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

The County has agreed to the 6001 – 8000 Permit Volume package. It is understood this will be billed on a levelized billing system of \$3,166.67 monthly. Notwithstanding any provision to the contrary, the County and SCPDC agree that no charges will accrue relating to *MyPermitNow* and *InspectionAnywhere* until the first month that the Parties agree that *MyPermitNow* and *InspectionAnywhere* has been made ready to go "live" so that members of the public are be able to submit applications for Travis County permits utilizing the *MyPermitNow* and *InspectionAnywhere* software. If anytime during a calendar year the total volume of permits exceeds the packages permit volume, the County 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.

Selected Add on Modules, If used:

MyProjectNow's Citizen Solution Center / Complaint Resolution Manager – Fixed monthly fee based off of the previous year's volume of Actionable Projects multiplied by \$0.70 and divided by 12 or ½ of the annual permit volume package price for *MyPermitNow* and *InspectionAnywhere*, whichever is LESS. For the first year this Agreement is in effect, the fixed monthly fee will be based on the County's good faith estimate of the number of complaints the County expects to receive multiplied by \$0.70 and divided by 12. There is no charge for Non-Actionable Projects. Notwithstanding any provision to the contrary, the County and SCPDC agree that no charges will accrue relating to *MyProjectNow's Citizen Solution Center/Complaint Resolution Manager* until the first month that the Parties agree that *MyProjectNow's Citizen Solution Center/Complaint Resolution Manager* has been made ready to go "live" so that members of the public are be able to utilize *MyProjectNow's Citizen Solution Center/Complaint Resolution Manager* to submit complaints relating to Travis County permits utilizing the *MyProjectNow's Citizen Solution Center/Complaint Resolution Manager* software.

MyAddressNow - \$230 Monthly. Notwithstanding any provision to the contrary, the County and SCPDC agree that no charges will accrue relating to *MyAddressNow* until the first month that the Parties agree that *MyAddressNow* has been made ready to go "live" so that members of the public are be able to utilize *MyAddressNow* with respect to Travis County permits.

SCPDC will invoice the County at the beginning of each month. The invoices shall be payable within 30 days of the date of the invoice in accordance with the terms and conditions set forth in this Agreement.

**SCHEDULE B
COOPERATIVE ENDEAVOR USE AGREEMENT
South Central Planning and Development Commission and Jurisdiction**

**EQUIPMENT SITE, USER NAME, AND
PERSONAL ACCESS PASSWORD**

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

Restricted to computers from which any County agent, employee, official, or representative with duties relating to the processing of County permits may access the Software via the Internet by using that individual's specially assigned user name and personal access password.

B.2. At the execution of this Agreement, SCPDC shall provide a **USER CREATION** form to the County to be used for requesting the creation of specially assigned user names and personal access passwords for individual County agents, employees, officials, or representatives who have duties relating to the processing of County permits. Upon completion of the forms the County will return the forms to SCPDC or its AGENT, and SCPDC or its AGENT shall create accounts in the Software system with information provided on the forms. Users can change the provided password after their first login to the Software's "Jurisdiction Portal Login." SCPDC will maintain the confidentiality of the user name and personal access password of every individual County agent, employee, official, or representative who has duties relating to the processing of County permits and will not release any such information to the public. SCPDC will provide additional personal user names and personal access passwords when the County submits a request to SCPDC using the user creation form and provides the user name and confirmation that the user is an employee, agent, official, or representative; when submitted to SCPDC, the request will become an addendum to this schedule.

B.3. The following individuals are authorized by the County to submit requests to SCPDC for (a) the creation of new user names and personal access passwords for individual County agents, employees, officials, or representatives who have duties relating to the processing of County permits, and (b) the de-activation of existing user names and personal access passwords for current or former County agents, employees, officials, or representatives:

**Stacey Scheffel, CFM
Permits Program Manager
Floodplain Administrator
Travis County Transportation and Natural Resources - Development Services
512-854-7565
stacey.scheffel@co.travis.tx.us**

and

Hershel Lee
Travis County Fire Marshal
5555 Airport Blvd., Suite 400
Austin, Texas 78751
(512) 854-4621
hershel.lee@co.travis.tx.us

SCPDC shall immediately comply with a request from either of the individuals listed above to create or de-activate a user name and personal access password.

The County may change the names of the individuals who are authorized to submit requests for the addition of new user names and personal access passwords and for the de-activation of existing user names and personal access passwords by providing notice in accordance with Section 12 of this Agreement.

SCHEDULE C
COOPERATIVE ENDEAVOR USE AGREEMENT
South Central Planning and Development Commission and Jurisdiction

MAINTENANCE AND SUPPORT

DEFINITIONS

1.1 "SUPPORT CALL (TIER 1)" means a reported problem in the 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 Software, not considered as a Level I support problem as defined in 1.1 above, which causes serious disruption of a Software function, but allows the Count to continue using the Software for all other functions.

1.3 "SUPPORT CALL (TIER 3)" means a reported problem in the 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 SCPDC begins the Maintenance and Support, including a verbal or written confirmation to the County.

1.5 "RESPONSE CENTER AND CONTACT INFORMATION" means:

Address
5058 West Main Street
Houma, LA 70360

Hours of Operation
8:00 a.m. to 4:30 p.m., Central Time

Contact Information

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

E-mail: support@scpsc.org

2. **TERM AND TERMINATION.** SCPDC's provision of Maintenance and Support to the County 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 the County has provided SCPDC with a written termination notice of its intention not to renew the Maintenance and Support at least ninety (90) 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 SCPDC. SCPDC will provide multi-site backup of permit issuance data for permits supported by MyPermitNow system. SCPDC will provide 24-hour emergency service support, including after-hours cell phone numbers that can be accessed through the MyPermitNow interactive voice response menu, for the County's staff and the County's customers to reach SCPDC's technical support personnel. SCPDC will offer to the County new versions of MyPermitNow Software as they become available. As part of SCPDC's maintenance and support services, upon the County's request and so long as practicable, SCPDC will attempt to convert the County's current permit data for use with SCPDC Software and SCPDC will perform daily exports of the County's permit and inspection data to the County's database. Within SCPDC's capabilities, SCPDC will perform customization of SCPDC Software based on the County's specific jurisdiction. Whenever possible, SCPDC will provide features in the Software allowing the County to create and search variances and define relationships between variances and permits. SCPDC 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 Software, and upon the County's request, SCPDC will provide the County with customized reports. The County is 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 is three (3) hours; SCPDC will provide a patch or work-around the next day, and the problem will be fixed or documented in next major product release;
- (ii) Support Call (Tier 2): Response Time is six (6) hours; SCPDC will provide a patch or work-around within five days, and the problem will be fixed or documented in next major product release;
- (iii) Support Call (Tier 1): Response Time is one (1) business day, the problem will be fixed as quickly as possible and will be documented and input for consideration in next major product release.

3.2 BASIC MAINTENANCE. Basic Maintenance means that SCPDC will provide, during SCPDC's 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. SCPDC's standard hours of service are Monday through Friday, 8:00 a.m. to 4:30 p.m., CST except for holidays as observed by SCPDC.

3.3 ON-SITE ASSISTANCE. At SCPDC's discretion, SCPDC can decide to provide Maintenance and Support at the County Site. In such event the County will reimburse SCPDC for all reasonable travel-related expenses and reasonable costs for board and lodging in accordance with the County's Budget Rules.

3.4 CAUSES WHICH ARE NOT ATTRIBUTABLE TO SCPDC. Maintenance and Support will not include services requested as a result of, or with respect to causes which are not attributable to the Software. These services will be billed to the County at SCPDC's then-current rates, and SCPDC will not perform any such services for the County until after receiving written authorization from the County to do so. Causes which are not attributable to SCPDC include but are not limited to:

3.4.1 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 SCPDC; 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;

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

3.4.3 Modification, alteration or addition or attempted modification, alteration or addition of the Software undertaken by persons other than SCPDC or SCPDC's authorized representatives except for modifications, alterations, additions, or attempted modifications or additions made by the County pursuant to procedures received from SCPDC for the rectification of errors or malfunctions in the Software;

3.4.4 Software programs developed by the County or other parties.

4. RESPONSIBILITIES OF LICENSEE. SCPDC's provision of Maintenance and Support to the County is subject to the following:

4.1 the County shall provide SCPDC with access to the County's personnel and Equipment during normal business hours. 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 The County shall provide supervision, control and management of the Use of the Software. In addition, the County 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 The County shall document and promptly report all errors or malfunctions of the Software to SCPDC. The County 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 SCPDC.
- 4.4 The County shall properly train its personnel in the Use and application of the Software and the Equipment on which it is used.
5. **MAINTENANCE FEE.** For the County, the maintenance fees are waived and the license fees cover all costs for maintenance and support for the terms of this Agreement.
6. **ASSIGNMENT OF DUTIES.** SCPDC may assign its duties of Maintenance and Support to a third party, provided that SCPDC will remain responsible for the actions of such third party. Any such assignment is subject to the County's consent, which consent shall not be unreasonably withheld or delayed.
7. **Project Abandonment –** Should SCPDC abandon development and support of My Permit Now system and can no longer fulfill its contractual obligations pursuant to this Agreement, the last stable source code release of My Permit Now Software will be licensed to the County under an open source license agreement such as the GNU General Public License. The specific open source license agreement would be chosen by SCPDC at such time.
8. **The County data -** SCPDC agrees to provide all hosted client data to the client electronically at any time in either the existing database format or CSV format by request. Upon the County's request, these transfers can be automated to take place on a regular schedule. SCPDC will not be held liable if technical issues disrupt the automatic scheduling of a data transfer. SCPDC will take all reasonable care to safeguard and protect the County's data. SCPDC must immediately notify the County of any breaches in the County's data. The County expressly agrees to maintain on its site and under its care a current copy of the County's permitting data.
9. **Role of Agent –** The Agent has no obligations or liabilities to the County implied or written in the interlocal contract except for CAPCOG's warranty that it is authorized to execute the Agreement on behalf of SCPDC. Except for CAPCOG's warranty to the County that it is authorized to execute this Agreement on SCPDC's behalf, CAPCOG's responsibilities and obligations are to SCPDC only and defined specifically in a separate agreement between SCPDC and the AGENT, hereinafter referred to as the "South Central Planning and Development Commission Independent Sales and Support Representative Agreement" or the "SCPDC/CAPCOG Agreement". The SCPDC/CAPCOG Agreement does provide additional services to the County which may include but is not limited to onsite representation, support issue mediation and marketing material distribution.

**ATTACHMENT A
ETHICS AFFIDAVIT**

**STATE OF TEXAS
COUNTY OF TRAVIS**

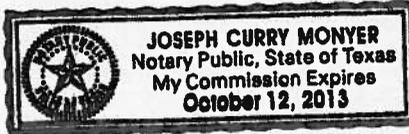
Date: 6/22/2012
Name of Affiant: Betty Voights
Title of Affiant: Executive Director
Business Name of Contractor: Capital Area Council of Governments
County of Contractor: Travis

Affiant on oath swears that the following statements are true:

1. Affiant is authorized by Contractor to make this affidavit for Contractor.
2. Affiant is fully aware of the facts stated in this affidavit.
3. Affiant can read the English language.
4. Contractor has received the list of key contracting persons associated with this contract which is attached to this affidavit as Exhibit A.
5. Affiant has personally read Exhibit A to this Affidavit.
6. Affiant has no knowledge of any key contracting person on Exhibit A with whom Contractor is doing business or has done business during the 365 day period immediately before the date of this affidavit.

Betty Voights
Signature of Affiant
6800 Birkson Rd, Bldg 310, Ste 105
Austin, TX 78744
Address

SUBSCRIBED AND SWORN TO before me by Betty Voights
on June 22, 2012



Joseph Monyer
Notary Public, State of Texas
Typed or printed name of notary
My commission expires: 10/12/13

ATTACHMENT 1
List of Key Contracting Persons
June 1, 2012

CURRENT

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Name of Business Individual is Associated</u>
County Judge	Samuel T. Biscoe	
County Judge (Spouse).....	Donalyn Thompson-Biscoe	
Executive Assistant	Cheryl Brown	
Executive Assistant	Melissa Velasquez	
Executive Assistant	Josie Z. Zavala	
Executive Assistant	Cheryl Aker	
Commissioner, Precinct 1	Ron Davis	
Commissioner, Precinct 1 (Spouse).....	Annie Davis	Seton Hospital
Executive Assistant	Deone Wihite	
Executive Assistant	Felcitas Chavez	
Commissioner, Precinct 2	Sarah Eckhardt	
Commissioner, Precinct 2 (Spouse).....	Kurt Sauer	Daffer McDaniel, LLP
Executive Assistant	Loretta Farb	
Executive Assistant	Joe Hon	
Executive Assistant	Peter Einhorn	
Commissioner, Precinct 3	Karen Huber	
Commissioner, Precinct 3 (Spouse).....	Leonard Huber	Retired
Executive Assistant	Garry Brown	
Executive Assistant	Lori Duarte	
Executive Assistant	Jacob Cottingham	
Commissioner, Precinct 4	Margaret Gomez	
Executive Assistant	Edith Moreida	
Executive Assistant	Norma Guerra	
County Treasurer	Dolores Ortega-Carter	
County Auditor	Susan Spataro, CPA	
County Executive, Administrative.....	Vacant	
County Executive, Planning & Budget	Leslie Browder*	
County Executive, Emergency Services	Danny Hobby	
County Executive, Health/Human Services	Sherri E. Fleming	
County Executive, TNR	Steven M. Manilla, P.E.*	
County Executive, Justice & Public Safety.....	Roger Jefferies	
Director, Facilities Management.....	Roger El Khoury, M.S., P.E.	
Chief Information Officer	Joe Harlow	
Director, Records Mgmt & Communications..	Steven Broberg	
Travis County Attorney	David Escamilla	
First Assistant County Attorney	Steve Capelle	
Executive Assistant, County Attorney	James Collins	
Director, Land Use Division.....	Tom Nuckols	
Attorney, Land Use Division.....	Julie Joe	
Attorney, Land Use Division.....	Christopher Gilmore	
Director, Transactions Division	John Hille	
Attorney, Transactions Division.....	Tamara Armstrong	
Attorney, Transactions Division.....	Daniel Bradford	
Attorney, Transactions Division.....	Mary Etta Gerhardt	
Attorney, Transactions Division.....	Barbara Wilson	
Attorney, Transactions Division.....	Jim Connolly	
Attorney, Transactions Division.....	Tenley Aldredge	

Director, Health Services Division..... Vacant
 Attorney, Health Services Division Prema Gregerson
 Purchasing Agent Cyd Grimes, C.P.M., CPPO
 Assistant Purchasing Agent Marvin Brice, CPPB
 Assistant Purchasing Agent Bonnie Floyd, CPPO, CPPB, CTPM
 Purchasing Agent Assistant IV Vacant
 Purchasing Agent Assistant IV Lee Perry
 Purchasing Agent Assistant IV Jason Walker
 Purchasing Agent Assistant IV Richard Villareal
 Purchasing Agent Assistant IV Patrick Strittmatter*
 Purchasing Agent Assistant IV Lori Clyde, CPPO, CPPB
 Purchasing Agent Assistant IV Scott Wilson, CPPB
 Purchasing Agent Assistant IV Jorge Talavera, CPPO, CPPB
 Purchasing Agent Assistant IV George R. Monnat, C.P.M., A.P.P.
 Purchasing Agent Assistant IV John E. Pena, CTPM
 Purchasing Agent Assistant IV Rosalinda Garcia
 Purchasing Agent Assistant III Shannon Pleasant, CTPM*
 Purchasing Agent Assistant III David Walch
 Purchasing Agent Assistant III Michael Long, CPPB
 Purchasing Agent Assistant III Loren Breland, CPPB
 Purchasing Agent Assistant III Nancy Barchus, CPPB
 Purchasing Agent Assistant III Jesse Herrera, CTP, CTPM, CTCM*
 Purchasing Agent Assistant III C.W. Bruner, CTP
 Purchasing Agent Assistant II Jayne Rybak, CTP*
 HUB Coordinator Sylvia Lopez
 HUB Specialist Betty Chapa
 HUB Specialist Jerome Guerrero
 Purchasing Business Analyst..... Scott Worthington
 Purchasing Business Analyst..... Jennifer Francis
 County Fire Marshal..... Hershel Lee
 Division Director, Engineering Services, TNR.... Anna Bowlin
 Permits Program Manager, TNR..... Stacey Scheffel, CFM
 Project Manager, ITS Bruce Bates

FORMER EMPLOYEES

<u>Position Held</u>	<u>Name of Individual</u>	<u>Date of Expiration</u>
Purchasing Agent Assistant IV	Oralia Jones, CPPB	07/31/12
County Executive, Planning & Budget	Rodney Rhoades	08/19/12
Purchasing Agent Assistant IV	Diana Gonzalez	12/16/12
Director, Health Services Division.....	Beth Devery	03/09/13
Purchasing Agent Assistant III	Elizabeth Corey, C.P.M.	03/14/13

* - Identifies employees who have been in that position less than a year.



TRANSPORTATION AND NATURAL RESOURCES
STEVEN M. MANILLA, P.E., COUNTY EXECUTIVE

411 West 13th Street
Executive Office Building, 11th Floor
P. O. Box 1748
Austin, Texas 78767
(512) 854-9383
FAX (512) 854-4697

June 27, 2012

MEMORANDUM

TO: Cyd Grimes, County Purchasing Agent
Carol B. Joyl for
FROM: Steven M. Manilla, County Executive, TNR
SUBJECT: Interlocal Agreement
Use of My Permit Now System

TNR requests that Travis County enter into an interlocal agreement with The Capital Area Council of Governments ("CAPCOG") and The South Central Planning and Development Commission ("SCPDC") for use of SCPDC's My Permit Now System.

The software license provides electronic permit tracking that speeds the review, inspection and permitting process. TNR's Development Services division along with Travis County's Fire Marshall will be utilizing the system.

If you should have any questions or need further information, please contact Christina Jensen at (512) 854-7670.

P SC:SMM:sc

EXHIBIT 1

**SOUTH CENTRAL PLANNING AND DEVELOPMENT COMMISSION
INDEPENDENT SALES AND SUPPORT REPRESENTATIVE
AGREEMENT**

**SOUTH CENTRAL PLANNING AND DEVELOPMENT COMMISSION
INDEPENDENT SALES AND SUPPORT REPRESENTATIVE AGREEMENT**

NOW COME, SOUTH CENTRAL PLANNING DEVELOPMENT COMMISSION, a Political Subdivision of the State of Louisiana, located in Terrebonne Parish, Louisiana, hereinafter referred to as ("SCPDC"), and

CAPITAL AREA COUNCIL OF GOVERNMENTS ("CAPCOG"), a council of governments and Texas political subdivision located in Austin, Texas;

Who, for the mutual benefit of the parties, their representative jurisdictions and jurisdictional constituents and with the intent of fulfilling the goal of the parties' stated public purpose, enter into this Independent Sales and Support Representative Agreement (the "Agreement").

WHEREAS:

(A) SCPDC is a Commission authorized by Louisiana statute to allow member governmental entities to come together through SCPDC 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;

(B) SCPDC has developed and owns proprietary software applications called "MyPermittNow", "MyCodeEnforcementNow", and "MyAddressNow", its revisions and subsequent versions or modifications, as well as complementary software created by SCPDC, hereinafter referred to as ("Software Application") that assists governmental jurisdictions with building plan review, permitting, and the building inspection process;

(C) SCPDC enters into an Interlocal Contract for Licensing SCDPC Software (the "Licensing Agreement") with governmental jurisdictions and charges them a licensing fee for using the Software Application;

(D) CAPCOG is a Council of Governments organized and operating under Texas law that operates to assist its members in planning for common needs, for mutual benefit and coordinating sound regional development;

(E) It is generally believed that governmental entities that use the "Software

Application" have realized substantial savings in costs associated with managing building permits, reviews and inspections;

(F) SCPDC believes that the "Software Application" is good for city, state, and federal governments by assisting them in managing their building permit, review and inspection process, and realizing a substantial savings. SCPDC has determined that it will make the "Software Application" available to all governmental jurisdictions that wish to license it from SCPDC. Licensing Fees collected from such licensing shall benefit SCPDC members;

(G) CAPCOG believes that governmental entities in the State of Texas will, likewise, benefit from the use of the Software Application and agrees to act as SCPDC's signing agent for the Licensing Agreement and as its independent sales and support representative to market, service, and support the use of the Software Application in Texas;

(H) Because there is increased cost associated with making the Software Application available outside of the territorial boundaries of the State of Louisiana, SCPDC has determined that in order to recoup the costs for making the Software Application available for use, it is in SCPDC's best interest to pay CAPCOG a sum of money (the "Permit Fee") for its efforts associated in securing signed License Agreements with governmental jurisdictions in the Territory; and,

(I) In return for payment of the Permit Fee , CAPCOG shall provide marketing, service and support as more fully detailed below;

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

Article 1: Appointment of Sales and Support Representative

1.1: Appointment.

Subject to the terms and conditions of this Agreement, SCPDC grants to CAPCOG a non-exclusive right to promote, market, and support the use of the "Software Application" in the State of Texas. CAPCOG hereby accepts such appointment and agrees to use its best efforts to promote, market, and support the use of the "Software Application" in the State during the term of this Agreement .

1.2: Discontinuations.

Nothing in this Article 1 or elsewhere in this Agreement shall preclude SCPDC from discontinuing the licensing of the "Software Application" to a governmental jurisdiction which SCPDC concludes in good faith is no longer profitable or otherwise feasible for SCPDC to license.

Article 2: Independent Contractor.

CAPCOG shall operate at all times pursuant to this agreement under its legal name. CAPCOG is an independent contractor and not associated with nor operating in any manner as an agent, except as specifically designated in paragraph 2.1 hereinbelow, joint venture or partner of SCPDC. CAPCOG and employees of the CAPCOG shall identify themselves as such, and shall make clear the limitations of their authority to any potential or actual Licensees of the "Software Application". CAPCOG may not, in any manner, accept any obligation, incur any liability, promise any performance or pledge any credit on behalf of, or for the account of, SCPDC, except those expressly permitted under this Agreement. Each party shall pay any and all expenses and charges relating to their performance of contractual obligations hereunder.

2.1: Limited Power Of Attorney

SCPDC, as Principal, hereby grants unto CAPCOG, as ("Signing Agent"), the Limited Power of Attorney to sign on behalf of Principal Licensing Agreements for the use of Software Application by Texas governmental jurisdictions. SCPDC, alone, shall provide approved Licensing Agreements to CAPCOG which CAPCOG shall present to Texas governmental jurisdictions for review and consideration. CAPCOG, itself, does not have any right, duty or obligation to negotiate the terms of the proposed Licensing Agreement with any potential Software Application Licensee or any other party; and CAPCOG has no right or duty under a Licensing Agreement it signs solely as SCPDC's agent.

2.2: Signed Agreements

Within 24 hours after the signing of a Licensing Agreement with a Texas governmental jurisdiction, CAPCOG shall electronically notify SCPDC of the signed agreement, and promptly forward at least one copy of the signed Licensing Agreement to SCPDC for its records.

Article 3: Territory

3.1: Territory.

The territory covered by this Agreement shall be the State of Texas (the "Territory").

Article 4: Commission

4.1: Permit Fee .

For all License Agreements signed by CAPCOG on behalf of SCPDC, CAPCOG shall be paid a Permit Fee by SCPDC as described in Attachment B, Permit Fee Schedule, to this Agreement.

4.2: Pricing.

Pricing, including any and all promotions, sales, or discounts, of the "Software Application" shall be in SCPDC's sole discretion. CAPCOG is only authorized to use SCPDC approved pricing in marketing and sales related to the "Software Application". SCPDC shall furnish CAPCOG current pricing information from time to time for use in marketing the Software Application.

Article 5: Software.

SCPDC will provide to the licensee all software necessary to operate the "Software Application" described in the License Agreement (the "Software"). Rights, title, and interest to the Software remains vested in SCPDC at all times. CAPCOG has no right or expectation to the Software. CAPCOG acknowledges it has no equity or ownership rights in the Software. CAPCOG may not take control or possession, actual or constructive, of the Software.

Article 6: Duties of CAPCOG

6.1: CAPCOG, at its own cost and expense, shall use all reasonable commercial efforts to develop and exploit the maximum sales of the "Software Application" in the Territory. CAPCOG's specific responsibilities are described in Attachment A, CAPCOG Responsibilities, to this Agreement. This covenant to use all reasonable commercial efforts shall include without limitation the following additional responsibilities:

(a) **Advertising and Promotion.** CAPCOG agrees to conduct, at its own expense, advertising and public relations campaigns promoting the product. CAPCOG must use only the sales tools and support materials provided by

SCPDC, unless they first submit it to SCPDC in writing and receive specific written approval for its use.

(b) **Websites.** SCPDC shall allow CAPCOG to place approved advertising on the Internet to promote the "Software Application". However, any websites (or URLs designating these websites) on which such advertisements or links are placed may not be obscene or otherwise deemed harmful to SCPDC's reputation as determined by SCPDC at its sole discretion. Additionally, URLs of websites used for advertising the "Software Application" may not contain any term that is a trademark, service mark, copyright, or that violates any other proprietary right held by another. SCPDC prohibits the use of unapproved online advertising to promote the "Software Application".

(c) **Domain names.** CAPCOG may not use or attempt to register any of SCPDC's trade names, trademarks, service names, service marks, product names, SCPDC's name, or any derivative thereof, for any Internet domain name.

6.2 Unsolicited email. SCPDC does not permit CAPCOG to send unsolicited commercial emails unless such emails strictly comply with applicable laws and regulations including, without limitation, the federal CAN SPAM Act. Any email sent by CAPCOG that promotes the "Software Application" must comply with the following:

- There must be a functioning return email address to the sender.
- There must be a notice in the email that advises the recipient that he or she may reply to the email, via the functioning return email address, to request that future email solicitations or correspondence not be sent to him or her (a functioning "opt-out" notice).
- The email must include CAPCOG's physical mailing address.
- The email must clearly and conspicuously disclose that the message is an advertisement or solicitation.
- The use of deceptive subject lines and/or false header information is prohibited.
- All opt-out requests, whether received by email or regular mail, must be honored. If CAPCOG receives an opt-out request from a recipient of an email, CAPCOG must forward the opt-out request to SCPDC. SCPDC

may periodically send commercial emails on behalf of CAPCOG. By entering into this Agreement, CAPCOG agrees that SCPDC may send such e-mails and that CAPCOG's physical and email addresses will be included in such emails as outlined above. CAPCOG shall honor opt-out requests generated as a result of such emails sent by the SCPDC.

6.3 Unsolicited faxes and Automatic Telephone dialing. Except as provided in this section, CAPCOG may not use or transmit unsolicited faxes or use an automatic telephone dialing system relative to the sale of the "Software Application". The term "automatic telephone dialing system" means equipment which has the capacity to: (a) store or produce telephone numbers to be called, using a random or sequential number generator; and (b) to dial such numbers. The terms "unsolicited faxes" means the transmission via telephone facsimile of any material or information advertising or promoting the "Software Application", except that these terms do not include a fax or e-mail: (a) to any person with that person's prior express invitation or permission; or (b) to any person with whom the CAPCOG has an established business or personal relationship. The term "established business or personal relationship" means a prior or existing relationship formed by a voluntary two-way communication between CAPCOG and a person, on the basis of: (a) inquiry, application, purchase or transaction by the person regarding products offered by such CAPCOG; or (b) a personal or familial relationship, which relationship has not been previously terminated by either party.

6.4 Licenses and Permits. CAPCOG agrees that it shall obtain any and all licenses and permits that may be required under all applicable Federal, State or local law in order to perform the duties and obligations hereunder.

6.5 Laws and Regulations. CAPCOG undertakes to comply with the rules of fair competition and all other applicable Federal, State or local laws and regulations.

6.6 Except as expressly provided by this Agreement, any and all expenses and /or charges connected with the fulfillment of CAPCOG's obligations and activity pertaining to this Agreement shall be exclusively borne by CAPCOG.

6.7 CAPCOG will, to the best of its ability, provide SCPDC with regular information as is necessary to keep SCPDC up to date regarding Licensing Agreements for the use of the Software Application. .

6.8 CAPCOG will not engage in any deceptive, unlawful or unethical

consumer or recruiting practice that may be detrimental or reflect poorly on SCPDC or themselves.

6.9 CAPCOG will, to the best of its ability, accept and fulfill its responsibilities to train, motivate, support and encourage all CAPCOG employees who carry out its responsibilities under this Agreement.

Article 7: Term

7.1 When both parties sign it, the duration of this Agreement (the "Initial Term") shall be for a period of one year from the date of the last party signing it. Thereafter, this Agreement shall be renewed, on the same terms and conditions, for additional, successive one- year periods (each, a "Renewal Term") if either party hereto gives to the other party written notice to renew this Agreement no later than 90 days prior to the end of the Initial Term or any Renewal Term. The Initial Term and the Renewal Term are hereinafter collectively referred to as the "Term".

7.2 Notwithstanding section 7.1 above, this Agreement may also be terminated at any time by SCPDC or CAPCOG immediately upon written notice to the other in the event that during the Term of this Agreement:

- (a) The CAPCOG is found, by the final non-appealable decision of a court of competent jurisdiction, to have failed to comply with applicable federal, state or local laws and regulations, or;
- (b) Either party shall suspend or discontinue its business, or shall make an assignment for the benefit of, or composition with, creditors, or shall become insolvent or be unable or generally fail to pay its debts when due, or either becomes in any jurisdiction a party or subject to (voluntarily or involuntarily) any liquidation or dissolution action or proceeding with respect to itself, or to any bankruptcy, reorganization, insolvency or other proceeding for the relief of financially distressed debtors is commenced with respect to it, or a receiver, liquidator, custodian or trustee shall be appointed for it, or a substantial part of its assets (and with respect to any involuntary action or proceeding, an order entered in the proceeding is not dismissed within thirty (30) days) or it shall take any action to effect or which indicates its acquiescence in any of the foregoing;
- (c) CAPCOG attempts to assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party; or
- (d) Either party materially breaches any provision of this Agreement and

fails to cure such breach within 45 days of receipt of written notice thereof.

7.3 Procedure Upon Termination.

Upon termination of this Agreement, CAPCOG shall cease to have any rights, liabilities or obligations hereunder, with the exception of payment by SCPDC to CAPCOG for any amounts owed pursuant to Article 4.

Article 8: Non-Solicitation/ Non-Competition.

8.1 Non-Competition. During the Term of this Agreement and for a period of two years following its termination, CAPCOG must not sell, or attempt to sell, any products or services in direct competition with the SCPDC to SCPDC customers or other governmental entities that are located in the State of Texas

The parties agree that the time, scope, and geographic limits contained in this Non-Competition are reasonable.

CAPCOG represents to SCPDC that enforcement of the restrictions contained in this agreement would not be unduly burdensome to CAPCOG. If any court shall determine that the duration or geographical limits of any restriction contained in this agreement are unenforceable, it is the intention of the parties that the restrictive covenant set forth herein, shall not thereby be terminated, but shall be deemed amended to the extent required or necessary to render it valid and enforceable to the fullest extent allowed by law.

Article 9: Confidentiality.

9.1 Confidential Information

(a) As used in this section 9.1, "Confidential Information" means all information disclosed to CAPCOG or otherwise acquired by CAPCOG in connection with its performance of its obligations under this Agreement, concerning or relating in any way to the markets, customers, products, procedures, plans, operating experience, marketing strategies, organization, employees, financial conditions or plans or business of SCPDC, its subsidiaries or affiliates.

(b) CAPCOG agrees to maintain the Confidential Information as such, to use it solely as authorized by this Agreement, and to take all reasonable precautions to protect it from unauthorized disclosure to third parties.

(c) CAPCOG agrees to refuse to disclose the Confidential Information, if requested to do so under the Texas Public Information Act, and instead to request an Attorney General's decision on whether the information may be disclosed. CAPCOG agrees to inform SCPDC of any request for disclosure of the information under the Texas Public Information Act.

Article 10: Trademarks

10.1 During the Term of this Agreement, CAPCOG shall have the limited, exclusive, royalty-free right to use the Trademarks described in Attachment C to this Agreement in connection with the promotion and use of Application Software in the Territory.

10.2 Use of the Trademarks shall conform to the following requirements:

(a) CAPCOG shall not use the Trademarks in any manner other than as set forth in Article 1 of this Agreement without the prior written approval of SCPDC.

(b) CAPCOG shall not put or retain the Trademarks in the CAPCOG's own name or any business name.

(c) CAPCOG shall not use the Trademarks in any manner that suggests an affiliation with SCPDC other than as an independent contractor carrying out this Agreement.

(d) CAPCOG shall employ any symbol or notice with the Trademarks that SCPDC advises is necessary, from time to time, to identify and protect the interest of the SCPDC in the Trademarks.

10.3 CAPCOG hereby acknowledges that SCPDC is the sole owner of the Trademarks and the goodwill pertaining thereto and that nothing contained herein shall constitute an assignment of the Trademarks or grant to CAPCOG any right, title or interest therein, except the right to use it as set forth in this Article 10. CAPCOG agrees that it will not contest SCPDC's ownership of the Trademarks, either during or after the Term.

10.4 CAPCOG shall promptly notify SCPDC in writing if it learns of any infringement of the Trademarks in the Territory, of any applications or registrations for the Trademarks or marks similar to the Trademarks within the

Final: 6/15/11

Territory, of any suit or proceeding or action of unfair competition involving the Trademarks in the Territory.

10.5 CAPCOG agrees that, upon the termination of this Agreement, it shall have no interest in or right to use the Trademarks in any manner or for any purpose whatsoever. If CAPCOG acquires any rights to the Trademarks for any reason, it undertakes to promptly return such rights to SCPDC immediately and without expense to SCPDC.

Article 11: Force Majeure

11.1 Neither party hereto shall be liable to the other for delay in any performance or for the failure to render any performance under this Agreement when such delay or failure is a direct result of any present or future statute, law, ordinance, regulation, order, failure to deliver on the part of its suppliers, judgment or decree, act of God, earthquake, epidemic, explosion, lockout, boycott, strike, labor unrest, riot, war, or similar catastrophic occurrence.

11.2 In the event of any such delay or failure, the affected party shall send written notice of the delay or failure and the reason thereof to the other party within fourteen (14) calendar days from the time the affected party knew or should have known of the Force Majeure in question.

Article 12: General Provisions

12.1 Notices.

(a) Any notice, request, demand, waiver, consent, approval or other communication required to be given pursuant to this Agreement (each, a "Notice"), except as otherwise stated above, shall be in writing and shall be deemed given:

(i) upon delivery, if by hand; (ii) after two (2) business days, if sent by express mail or air courier; or (iii) upon transmission, if sent by facsimile (provided that a confirmation copy is also sent in the manner provided in clause (ii) of this Article 12 within 36 hours after such transmission), except that if notice is received by facsimile after 5:00 p.m. on a business day at the place of receipt, it shall be effective as of the following business day. All Notices are to be given or made to the parties at the addresses set out in subsection (b).

(b) CAPCO's address is 6800 Burleson Road, Building 310, Suite 165, Austin, TX 78744, Attention: Executive Director. SCPDC's address is 5058 West Main St. Houma, LA 70360, Attention: Kevin Berlander, Executive Director.

12.2 Entire Agreement

This Agreement, together with its Attachments, contains the entire agreement and understanding of the parties hereto with respect to the matters herein set forth, and all prior negotiations and understandings relating to the subject matter of this Agreement are merged herein and are superseded and canceled by this Agreement. This Agreement may not be modified except in writing, signed by both of the parties hereto.

12.3 Waiver.

The failure by SCPDC to require the performance of any term of this Agreement or the waiver by SCPDC of any breach under this Agreement shall not operate or be construed as a waiver of any subsequent breach by the CAPCOG hereto.

12.4 Assignment.

CAPCOG shall not assign its rights nor delegate the performance of its duties or other obligations under this Agreement, including any claims arising out of or connected with this Agreement, without the prior written consent of SCPDC. On the other hand, SCPDC may assign its rights to this agreement without the consent of CAPCOG.

12.5 Authority.

The parties to this agreement expressly warrant and represent that they have authority to enter in to this agreement according to their respective rules and regulations applicable to their creation, mandate, and right to conduct business. Further, the undersigned warrant and represent that they have full authority and power to execute this agreement and to bind SCPDC and CAPCOG to the terms and conditions of this agreement.

12.6 Limitations of Liability.

SCPDC shall not be liable for any incidental, special or consequential damages, including loss of revenue, loss of use of equipment, loss of use of facilities, or economic damages, based on any theory of law to include but not

Final: 6/15/11

limited to strict liability, breach of contract or warranty, failure to follow applicable statute/ordinance/code, or negligence. SCPDC's maximum liability for any reason shall consist of any unpaid Permit Fees owed CAPCOG under this Agreement.

12.9 Waiver of Warranties.

ALL PERSONAL AND GROUP SALES MARKETING MATERIAL RELATED TO THE "SOFTWARE APPLICATION" IS PROVIDED BY SCPDC IS PROVIDED "AS IS" WITHOUT WARRANTIES, EXPRESSED OR IMPLIED, OR REPRESENTATIONS OF ANY KIND WHATSOEVER. IN PARTICULAR BUT WITHOUT LIMITATION THERE SHALL BE NO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR NON-INFRINGEMENT RELATED TO THE MYPERMITNOW SOFTWARE APPLICATION.

BY SIGNING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND APPROVED AND HEREBY AGREE TO THE CONTENTS LISTED ABOVE AND THE TERMS AND CONDITIONS CONTAINED THEREIN.

SOUTH CENTRAL PLANNING AND DEVELOPMENT COMMISSION

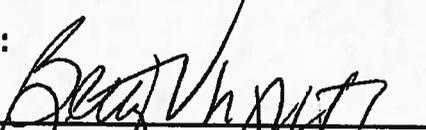
By: 

Its: CEO

Printed name: Kevin P. Belanger

Date 6/21/11

CAPITAL AREA COUNCIL OF GOVERNMENTS

By: 

Betty Voights

Executive Director

Date 6-16-11

ATTACHMENT "A"

CAPCOG RESPONSIBILITIES

MARKETING

- Only provide officially designated marketing materials, including all print handouts, promotional items such as cozies and pens. CAPCOG may want to create on its own website graphics and descriptions. These must first be approved in writing by SCPDC. CAPCOG hands out and distributes all marketing materials including printouts and promotional items as described above for jurisdictions in their region. There will be no penalty to SCPDC if SCPDC is unable to keep CAPCOG properly stocked. It is SCPDC's own discretion as to how many items if any CAPCOG receives and keeps on hand.
- CAPCOG has a responsibility to make an initial offering of the Software Application through written letters, phone calls, e-mail and other means at their own cost.
- CAPCOG has a responsibility to attend in person all online webinar trainings and act as our in person representative at their own cost.
- Answers to questions about the capabilities of the Software Application, performance and other relevant issues should be articulated in the terms and nomenclature that SCPDC provides. Technical questions should be directed to SCPDC sales representatives.

MANAGEMENT

- It is expected that CAPCOG will research a jurisdiction's internal political process and identify the best points of contact to market the Software Application and assist and follow up with the jurisdiction in getting the Licensing Agreement signed. CAPCOG will be responsible for managing any renewals of signed agreements. CAPCOG will be responsible for making a phone call at least every quarter to the licensee jurisdiction to see if there are any unresolved problems and other suggestions for improvement. CAPCOG will then relay jurisdiction comments back to SCPDC.

ATTACHMENT "B"

PERMIT FEE SCHEDULE

Permit Volume	My Permit Now Revenue Sharing			% of Inc
	Jurisdiction Total Revenue	SCPDC Annual Share	Partnered Cog Annual Share	
0 - 100	\$675.00	\$600.00	\$75.00	
101 - 500	\$3,125.00	\$2,750.00	\$375.00	
501 - 1000	\$6,000.00	\$5,250.00	\$750.00	
1001 - 2000	\$11,500.00	\$10,000.00	\$1,500.00	
2001 - 4000	\$22,000.00	\$19,000.00	\$3,000.00	
4001 - 6000	\$30,000.00	\$27,000.00	\$3,000.00	
6001 - 8000	\$38,000.00	\$34,000.00	\$4,000.00	
8001 - 10000	\$45,000.00	\$40,000.00	\$5,000.00	
10001 - 12000	\$51,000.00	\$45,000.00	\$6,000.00	
12001 - 14000	\$56,000.00	\$49,000.00	\$7,000.00	
14001 - 16000	\$60,000.00	\$52,000.00	\$8,000.00	
16001 - 18000	\$63,000.00	\$54,000.00	\$9,000.00	
18001 - 30000	\$65,000.00	\$55,000.00	\$10,000.00	

AVG % Increase

My Address Now

JURISDICTION REVENUE	SCPDC SHARE	Partnered COG SHARE
\$2760 annually	\$2,346	\$414 annually

My Project Now – Code Enforcement Module Addon

JURISDICTION REVENUE	SCPDC SHARE	Partnered COG SHARE
.70 per Actionable Case	.60 per Actionable Case	.10 per Actionable Case

Final: 6/15/11

ATTACHMENT "C"

TRADEMARKS

MyPermitNow

MyCodeEnforcementNow

MyProjectNow

OneStopPermitShow

MyAddressNow

SCPDC

South Central Planning & Development Commission