

STATE OF TEXAS

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COUNTY OF FORT BEND

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**THIRD AMENDMENT TO INTERLOCAL CONTRACT FOR LICENSING
SCPDC SOFTWARE**

THIS THIRD AMENDMENT ("Third Amendment") is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas; and South Central Planning and Development Commission, ("SCPDC"), a regional planning commission and political subdivision of the State of Louisiana, domiciled in Terrebonne Parish, by and through its authorized agent, the Capital Area Council of Governments, ("CAPCOG"), (collectively referred to as the "parties").

WITNESSETH:

WHEREAS, the parties previously entered into the Interlocal Contract for Licensing SCPDC Software, on or about September 23, 2014, and as amended on or about April 5, 2022 (the "Amendment"), and as amended on or about February 28, 2023 (the "Second Amendment"), collectively referred to as the "Agreement", attached hereto as Exhibit "I-A" and incorporated herein for all purposes. The parties desire to amend said Agreement as set forth below:

I. Amendments

1. **Scope of Services.** SCPDC shall continue to provide software licensing services to County as described in Exhibit I-A.
2. **Term.** This Agreement shall renew and this Third Amendment is effective as of September 22, 2023 and shall expire no later than September 21, 2024, unless terminated sooner pursuant to this Agreement. This Agreement shall not automatically renew, but may renew upon written agreement of the parties.
3. **Limit of Appropriation.** SCPDC's fees shall be calculated at the rates set forth in SCPDC's Quote, dated August 15, 2023, attached as Exhibit "II-A", and incorporated fully by reference. The Maximum Compensation for the performance of services within the Scope of Services as described in Exhibit I-A is \$45,000.00. In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order. SCPDC clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of \$45,000.00, specifically allocated to fully discharge any and all liabilities County may incur. SCPDC does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that SCPDC may become entitled to and the total maximum sum that County may become liable to pay to SCPDC shall not under any conditions, circumstances, or interpretations thereof exceed \$45,000.00.
4. **Modifications.** Except as modified herein, the Agreement remains in full force and effect and has not been modified or amended.
5. **Conflict.** If there is a conflict among documents, the most recently executed document will prevail with regard to the conflict.

6. **Understanding, Fair Construction.** By execution of this Third Amendment, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Third Amendment. This Third Amendment, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
7. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

(Execution Page Follows)

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IN WITNESS WHEREOF, this Third Amendment is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Third Amendment and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

SOUTH CENTRAL PLANNING AND DEVELOPMENT COMMISSION, BY AND THROUGH ITS AUTHORIZED AGENT, THE CAPITAL AREA COUNCIL OF GOVERNMENTS

KP George, County Judge



Authorized Agent - Signature

Date

Betty Vaughn

Authorized Agent- Printed Name

ATTEST:

Executive Director, CAPROG

Title

Laura Richard, County Clerk

9/5/23

Date

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of Fort Bend County under this Agreement.

Robert Ed Sturdivant, County Auditor

Exhibit I-A: Interlocal Contract for Licensing SCPDC Software, executed by the parties on or about September 23, 2014, and as amended on or about April 5, 2022, and as amended on or about February 28, 2023; and
Exhibit II-A: SCPDC's Quote, dated August 15, 2023.

I:\AGREEMENTS\2023 Agreements\IT\South Central Planning & Development Commission (23-IT-100349)\South Central Planning & Development Commission (23-IT-100349-A1)\Third Amendment to Agreement with South Central Planning & Development Commission.docx aw

EXHIBIT I-A

5. **Conflict.** If there is a conflict among documents, the most recently executed document will prevail with regard to the conflict.
6. **Understanding, Fair Construction.** By execution of this Second Amendment, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Second Amendment. This Second Amendment, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
7. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

(Execution Page Follows)

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this Second Amendment is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Second Amendment and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

SOUTH CENTRAL PLANNING AND DEVELOPMENT COMMISSION, BY AND THROUGH ITS AUTHORIZED AGENT, THE CAPITAL AREA COUNCIL OF GOVERNMENTS



County Judge KP George

KP George, County Judge



Authorized Agent - Signature

February 28, 2023

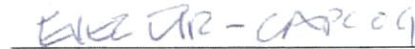
Date






Authorized Agent- Printed Name

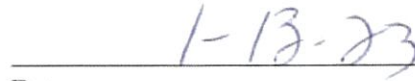
ATTEST:



Title



Laura Richard, County Clerk



Date

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 45,000.00 to accomplish and pay the obligation of Fort Bend County under this Agreement.



Robert Ed Sturdivant, County Auditor

Exhibit I: Interlocal Contract for Licensing SCPDC Software, executed by the parties on or about September 23, 2014, and as amended on or about April 5, 2022; and

Exhibit II: SCPDC Invoice (Invoice Number: 23T-321)

EXHIBIT I

contained in this Amendment. This Amendment, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.

7. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

(Execution Page Follows)

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this Amendment is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Amendment and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

SOUTH CENTRAL PLANNING AND DEVELOPMENT COMMISSION, BY AND THROUGH ITS AUTHORIZED AGENT, THE CAPITAL AREA COUNCIL OF GOVERNMENTS

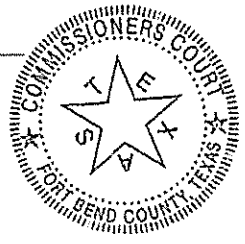
KP George
County Judge KP George
KP George, County Judge

[Signature]
Authorized Agent - Signature

April 5, 2022
Date

Kevin P. Belanger
Authorized Agent- Printed Name

ATTEST:



CEO
Title

Laura Richard
Laura Richard, County Clerk

1/12/22
Date

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 45,000.00 to accomplish and pay the obligation of Fort Bend County under this Agreement.

[Signature]
Robert Ed Sturdivant, County Auditor

Exhibit 1: Interlocal Contract for Licensing SCPDC Software, executed by the parties on or about September 23, 2014

EXHIBIT 1

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. Fort Bend 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 relating to the Software supplied to the County by SCPDC;
- (b) information provided by the County to SCPDC and clearly marked as "confidential information", or in the event the information is not reduced to writing within thirty (30) days, the information shall be deemed confidential if it was identified as confidential at the time of disclosure or if SCPDC should reasonably have known such information was confidential at the time of disclosure; 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, MyPermitNow version X.0 (Major Update) and MyPermitNow 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 three (3) 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
- (c) 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. 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 intentionally 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.

6. MAINTENANCE AND SUPPORT. The County 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 and all Maintenance Fees with respect to each Site, the County 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. Prior to terminating the rights granted under this section, SCPDC shall provide the County with thirty (30) days written notice of termination. If the County pays the Maintenance Fees prior to date of termination contained in the written notice, the County shall be deemed current and not in breach 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 and any Maintenance Fees for each Site. 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;
- (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) the County 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.

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) the County shall not be liable for any infringement of those rights and any rights granted to the County shall apply for the duration of this Agreement. SCPDC shall at its expense, defend or settle any claim, action, or allegation brought against the 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 thirty (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 the County less one-twenty-fourth (1/24) thereof for each month or portion thereof, that this Agreement was effective during the two (2) year term.

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.

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. SCPDC shall provide any responsive records to the County no later than two (2) business days after SCPDC receives a request for information from the County, 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 seek 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) Upon written notice to SCPDC that the County would no longer like to use the Software. In the event that the County chooses not to renew the Agreement in the Initial Term and/or any successive term thereafter, the County shall provide thirty (30) days prior written notice from the end of the current term of the Agreement.
- (2) 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.
- (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 45 days after receiving written notice of the same.
- (4) 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.

(b) By SCPDC:

- (1) 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 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 Fort Bend 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:

Richard W. Stolleis, PE
County Engineer
Fort Bend County Engineering Department
301 Jackson Street
Richmond, TX 77469

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 LICENSEE 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, which consent will not be unreasonably withheld or delayed

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 PUBLIC ANNOUNCEMENTS. Contact with any media, citizens of Fort Bend County or governmental agencies shall be the sole responsibility of the County. The County reserves the right to review any use of its name and to withhold permission, which permission will not be unreasonably withheld or delayed.

13.10 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.

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

13.12 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.

13.13 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.

13.14 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:

Richard W. Stolleis, PE
County Engineer
Fort Bend County Engineering Department
301 Jackson Street
Richmond, TX 77469

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) Licensee 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.

The 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.

13.15 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 Licensee Purchasing Agent. False certification or failure to notify may result in termination of this Agreement for default.

13.16 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.

13.17 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.

13.17.1 "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.

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

13.18 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 Licensee.

13.19 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 (30) 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 (30) calendar days after receipt of the unsatisfactory reply. SCPDC then has the right to be heard by Commissioners Court.

13.20 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 the County:

Richard W. Stolleis, PE
 County Engineer
 Fort Bend County Engineering Department
 301 Jackson Street
 Richmond, TX 77469
 281-633-7500
 Richard.Stolleis@fortbendcountytexas.gov

13.21 FUNDING OUT. Despite anything to the contrary in this Agreement, if during budget planning and adoption, the Fort Bend County Commissioners Court fails to provide funding for this Agreement for the following fiscal year of the County, the County may terminate this Agreement after giving SCPDC thirty (30) days written notice that this Agreement is terminated due to the failure to fund it.

13.22 ASSIGNMENT OF CONTRACT OR MORTGAGE. SCPDC shall 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 Fort Bend County Commissioners Court. SCPDC shall not execute any mortgage, or issue any bonds, shares of stock, or other evidence of interest in any of the County's buildings.

13.23 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.

13.24 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 (3) times the cost incurred by SCPDC in providing the gratuities.

13.25 GOVERNING LAW; NO WAIVER OF IMMUNITY. This Agreement is governed by the laws of the State of Texas, and suit may be brought in Fort Bend County, Texas to enforce the terms of this Agreement. 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. 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.

13.26 This Agreement is not intended, nor may it be construed, to confer any benefits, rights, or remedies upon any person not a party hereto.

13.27 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 the 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 Fort Bend County Commissioners Court.

13.28 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 the 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 A.M. on the first Sunday in November until 2:00 A.M. on the second Sunday of March and in Central Daylight Savings Time from 2:00 A.M. on the second Sunday of March until 2:00 A.M. on the first Sunday of November.

13.29 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.

13.30 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.

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

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 execute this Agreement on behalf of the organization, and legally bind the organization to all terms, performances, and provisions of this Agreement

IN WITNESS WHEREOF, the parties have executed this Agreement.

(Signatures On Next Page)

FORT BEND COUNTY, TEXAS

By: *Robert E. Hebert*
Robert E. Hebert, County Judge

9-23-2014
Date

SOUTH CENTRAL PLANNING AND
DEVELOPMENT COMMISSION
THROUGH ITS AGENT, CAPCOG

By: *Betty Voights*
Betty Voights, CAPCOG Executive Director

9-15-14
Date

ATTEST:

By: *Dianne Wilson*
Dianne Wilson, County Clerk

(SEAL)



REVIEWED:

By: *Richard Stolleis*
Richard Stolleis, Fort Bend County Engineer

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 55,560.00 to accomplish and pay the obligation of Fort Bend County under this contract.

A handwritten signature in blue ink, appearing to read "Bill H...", is written over the text of the certificate.

**SCHEDULE A
INTERLOCAL CONTRACT
South Central Planning and Development Commission and Fort Bend County
SOFTWARE AND LICENSE FEE**

A. SOFTWARE USE

The License authorizes the County to use of SCPDC's MyPermitNow System, Number 3.0 Standard configuration, including the following modules: Permit Management, Plan Review, Inspections, Alerts and functionality that is incorporated into MyPermitNow 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 8001- 10000 Permit Volume package including the **MyAddressNow** optional add-on module. Furthermore, the County has also agreed to the **Planning and Zoning Project Tracking** optional add-on module at the rate of \$650.00 per month and the County agrees that this discount pricing is contingent on using this add-on module only to track final subdivision plats and site development permits. It is understood this package with all add-on modules will be billed on a levelized billing system of \$4,630.00 monthly. 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. At the end of a permit volume year if the County's permit volume exceeds 20% of the max permit volume number of their currently subscribed package the County shall automatically subscribe to the package that the total new permit volume count places them in.

Selected Add on Modules, if used:

Planning and Zoning Project Tracking (Subdivision/Platting, Zoning, Variances) -

This is an optional add-on to track an entire planning and zoning project start to finish outside of a permit project.

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 County permits or that integration with the County's GIS system has gone live.

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 Fort Bend County
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:

Clay Forister, PE
Assistant County Engineer –
Development
Fort Bend County Engineering
Department
281-633-7500
Clay.Forister@fortbendcountytexas.gov

Jillian Hernandez
Executive Assistant
Fort Bend County Engineering
Department
281-633-7500
Jillian.Hernandez@fortbendcountytexas.gov

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 Fort Bend County
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 as intended or any request to add/remove user accounts or add/remove codes or dropdown list entries.

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 licensee 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:

<u>Address</u>	<u>Hours of Operation</u>
5058 West Main Street Houma, LA 70360	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@scpdc.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 thirty (30) days prior to the termination expiration of

the then-current term. Termination of Maintenance and Support upon failure to renew will not affect the license of the Software.

3. MAINTENANCE AND SUPPORT SERVICES. Maintenance and Support will be provided only with respect to use of the versions of the Software that are being supported by 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. SCPDC will provide County with instructions and formatting requirements necessary for the County's permit data extracts for the data conversion. SCPDC will support the custom integration of the MyAddressNow software with the County's ESRI GIS system, which will be developed by SCPDC in conjunction with the implementation of MyAddressNow for the County. 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 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.
- (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 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;

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 (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 if provided; (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 and subject to the Fort Bend County Travel Policy, SCPDC can elect to provide Maintenance and Support at the County Site. If SCPDC elects to provide Maintenance and Support at the County Site, the County will reimburse SCPDC for all reasonable travel-related expenses and reasonable costs for board and lodging. The Fort Bend County Travel Policy in effect at the time of an election described in this paragraph, will govern reimbursement expenses and costs.

3.4 AVAILABILITY OF PRODUCT. The licensed software shall be made available by SCPDC 24 hours per day, seven days per week, 365 days per year (24x7x365) less any required maintenance periods and disaster recovery periods. In the event of a disaster which renders the licensed software to be inaccessible, SCPDC shall use commercially reasonable efforts to re-establish access to the software within 24 hours by redirecting access to the licensed software to alternate hardware in the primary data center, or by transferring service to the secondary data center. Actual recovery times will vary based on the nature and extent of the disaster.

3.5 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:

3.5.1 Accident. Unusual physical, electrical or electromagnetic stress; neglect; misuse; failure or fluctuation of electric power, air conditioning or humidity control; failure of rotation media not furnished by 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;

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

3.5.3 Modification, 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;

3.5.4 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 When necessary to research a reported problem, 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 remotely access the Equipment on which the Software is operating and to obtain the level of access necessary to support the Software. Remote access will be obtained by utilizing a remote support tool which allows SCPDC to view and take control of the execution of the Software to diagnose the problem without the ability to modify the Equipment's configuration and without gaining access to the County's network or other Equipment.

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 Initial Term and any successive term 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 MyPermitNow system and can no longer fulfill its contractual obligations pursuant to this Agreement, the last stable source code release of MyPermitNow Software will be licensed to 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 shall not allow access to any of the County's hosted data to anyone not a party to this Agreement without the County's prior written authorization. SCPDC agrees to provide all hosted County data to the County 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 shall 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. 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.

Accepted:

FORT BEND COUNTY, TEXAS

By: *Robert E. Hebert*
Robert E. Hebert, County Judge

9-23-2014
Date

SOUTH CENTRAL PLANNING AND
DEVELOPMENT COMMISSION
THROUGH ITS AGENT, CAPCOG

By: *Betty Voights*
Betty Voights, CAPCOG Executive Director

9-19-14
Date

ATTEST:

By: *Dianne Wilson*
Dianne Wilson, County Clerk



(SEAL)

REVIEWED:

By: *Richard Stolleis*
Richard Stolleis, Fort Bend County Engineer

EXHIBIT II



5058 W. Main St., Houma, LA 70360-4900 • P.O. Box 1870, Gray, LA 70359
 Phone: (985) 851-2900 • Fax: (985) 851-4472

Parishes: Assumption • Lafourche • St. Charles • St. James • St. Mary • St. John • Terrebonne
 Municipalities: Baldwin • Berwick • Franklin • Golden Meadow • Gramercy •
 Lockport • Lutcher • Morgan City • Napoleonville • Patterson • Thibodaux

INVOICE NUMBER: 23T-321
 INVOICE DATE: 09/27/22

558

TO: Fort Bend County
 Engineering Department
 301 Jackson Street
 Richmond, TX 77469
 Attn: Richard Stolleis, PE

As per Cooperative Endeavor Agreement, all invoices are payable within 30 days of invoice date

PO # 212163

SEPTEMBER 2022 MyGovernmentOnline.org	
4500 My Permit Now and Inspection Anywhere Software and License Fees	\$ 3,750.00
<i>8001-10,000 Permits @ \$45,000 annually</i> <i>Overage Rate of \$5.50 per permit - Based on Calendar Year</i> <i>(Permit Volume from 01/01/22 - 09/26/22) 6735</i> Monthly Installment per Agreement \$ 3,750.00	
Current Amount Due	<div style="border: 1px solid black; padding: 2px;"> \$ 3,750.00 </div>


 Sean Eglinton 10/4/2022

EXHIBIT II-A



5058 W. Main St., Houma, LA 70360-4900 • P.O. Box 1870, Gray, LA 70359
 Phone: (985) 851-2900 • Fax: (985) 851-4472

Parishes: Assumption • Lafourche • St. Charles • St. James • St. Mary • St. John • Terrebonne
 Municipalities: Baldwin • Berwick • Franklin • Golden Meadow • Gramercy •
 Lockport • Lutcher • Morgan City • Napoleonville • Patterson • Thibodaux

QUOTE

QUOTE DATE: 08/15/23

558

TO: Fort Bend County
 Engineering Department
 301 Jackson Street
 Richmond, TX 77469

Attn: Richard Stolleis, PE

As per Cooperative Endeavor Agreement, all invoices are payable within 30 days of invoice date

SEPTEMBER 22, 2023 - SEPTEMBER 21, 2024	
MyGovernmentOnline.org	
4500	\$ 45,000.00
My Permit Now and Inspection Anywhere	
Software and License Fees	
<i>8001-10,000 Permits @ \$45,000 annually</i>	
<i>Overage Rate of \$5.50 per permit - Based on Calendar Year</i>	
Monthly Installment per Agreement \$ 3,750.00	
Current Amount Due	\$ 45,000.00