

INTERLOCAL AGREEMENT FOR LICENSING SCPDC SOFTWARE

SECTION 1. PARTIES AND PURPOSE

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

1.2. City of Angleton ("Licensee" or "City") located at 121 S. Velasco, Texas 77515 domiciled in Brazoria County, 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. The district was established in 1973 and created by law in 1978 under state act 472. The statute allows its member governmental entities to come together through 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.

1.4. SCPDC has created a unique suite of government management software modules collectively called MyGovernmentOnline ("MGO") software (the "SCPDC Software") and this contract is entered into among Licensee, and SCPDC under chapter 791 of the Government Code to license Contractor to use the SCPDC Software under certain terms and conditions. CAPCOG has been granted a limited power of attorney by SCPDC to execute this contract on SCPDC's behalf.

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

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

SECTION 2. DEFINITIONS

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

Proprietary Information and Texas Public Information Act: All material submitted to the City shall become public property and subject to the Texas Public Information Act upon receipt. If SCPDC does not desire proprietary information to be disclosed, each page must be clearly identified and marked proprietary at time of submittal or, more preferably, all proprietary information may be placed in a folder or appendix and be clearly identified and marked as being proprietary. The City will, to the extent allowed by law, endeavor to protect from public disclosure the information that has been identified and marked as proprietary. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to clearly identify and mark information as being proprietary as set forth under this provision will result in all unmarked information being deemed non-proprietary and available to the public. For all information that has not been clearly identified and marked as proprietary by SCPDC, the City may choose to place such information on the City's website and/or a similar public database without obtaining any type of prior consent from SCPDC.

To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that the City, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to the City as to whether or not the same are available to the public. It is further understood that the City's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that the City, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to the City by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

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 Licensee at any time.

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

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

2.5 "**MAJOR AND MINOR UPDATES**" shall mean updates, if any, to the SCPDC Software. Major Updates involve additions of substantial functionality while Minor Updates do not. Major Updates are designated by a change in the number to the left of the decimal point of the number appearing after the product name while Minor Updates are designated by a change in such number to the right of the decimal point. Example, MGO version X.0 (major update) and MGO 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 Licensee's Web Site, at which Licensee and its customers are entitled to Use the Software.

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

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

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

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

SECTION 3. LICENSE, DELIVERABLES AND COPIES

3.1 LICENSE GRANT.

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

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

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

If derivative works of the SCPDC Software are prepared by or on behalf of Licensee based on suggestions or requests by Licensee, SCPDC will solely own such modifications.

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

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

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

SECTION 4. LICENSE RESTRICTIONS

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

SECTION 5. LICENSE FEE

5.1 **LICENSE FEE.** In consideration of the license granted pursuant to Section 2.1. Licensee agrees to pay SCPDC the License Fee specified in Schedule A. Licensee shall pay SCPDC a fee based on Licensee's use of the SCPDC Software, determined according to the terms set forth in Schedule A. It is expressly agreed that the Licensee will not house transactions that are the basis of fees paid to SCPDC in another system with the intention of avoiding the responsibility of paying fees to SCPDC for the term of this agreement. Should SCPDC determine that Licensee violates this provision, SCPDC, at its expense and on reasonable notice, may cause such Licensee's records to be audited during regular business hours at Licensee's facilities. If an audit reveals underpayment of fees due under this Agreement, all such amounts will be promptly paid with interest at the prevailing U.S. dollar prime rate accruing from the original due date. If any such underpayment exceeds 5% of the fees due for the period audited, Licensee will also pay SCPDC's reasonable costs of conducting the audit.

Texas Prompt Payment Act Compliance: Payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date licensee receives the goods under the contract; (2) the date the performance of the service under the contract is completed; or (3) the date the City Auditor receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by licensee in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of Licensee's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

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

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

SECTION 6. MAINTENANCE AND SUPPORT

6.1 Licensee agrees to pay Fees according to Schedule A. For so long as Licensee is current in the payment of all fees in Schedule A, with respect to each software module, Licensee will be entitled to Maintenance and Support for each software module as set forth in Schedule C attached hereto. Upon failure to pay fees with respect to any software module SCPDC shall provide written notice to Angleton, the failure to pay 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.

SECTION 7. LIMITED WARRANTY AND LIMITATION OF LIABILITY

7.1 **LIMITED WARRANTY.** SCPDC warrants for the term of the contract from the Effective Date (the "**Warranty Period**") the Software will perform in substantial accordance with the Documentation under normal use. If during the Warranty Period the Software does not perform as warranted (a "**Non-Conformance**"), 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 Licensee the License Fee. **THE FOREGOING ARE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY.** The warranty set forth above is made to and for the benefit of Licensee only. The warranty will apply only if:

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

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

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

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

Any pre-production versions of the Software distributed to Licensee are delivered "as-is," without any express or implied warranties. No employee, agent, representative or affiliate of 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.

7.2 DISCLAIMER. EXCEPT AS SET FORTH ABOVE, 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, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT 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.

7.3 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, EXCEED THE LICENSE FEE PAID BY LICENSEE TO SCPDC UNDER THIS AGREEMENT.

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

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

SECTION 8. CONFIDENTIALITY

8.1 CONFIDENTIAL INFORMATION. Each party acknowledges that the Confidential Information constitutes valuable trade secrets and each party agrees that it shall use Confidential Information solely in accordance with the provisions of this Agreement and will not disclose, or permit to be disclosed, the same, directly or indirectly, to any third party without the other party's

prior written consent. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. However, neither party bears any responsibility for safeguarding information that (i) is publicly available, subject to a public information request pursuant to Chapter 552, Texas Government Code, (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.

SECTION 9. TERM AND TERMINATION

9.1 **TERM.** This Agreement will take effect on the Effective Date and will remain in force for a period of three (3) years thereafter. The contract will automatically renew 12-months following the end of the initial term for one additional year, unless terminated in accordance with this Agreement.

9.2 **TERMINATION.** This Agreement is terminated by:

(a) By Licensee. Should there be discovered a serious defect or flaw in the SCPDC software that prevents the Licensee from using the system to support Licensee's operations in issuance of permits, Licensee shall notify SCPDC of the issue. SCPDC will have 45 days to resolve the issue. If the issue cannot be resolved within the time period, the contract will terminate on the 1st of the following month.

(b) By SCPDC. Upon written notice to Licensee if any of the following events ("**Termination Events**") occur, provided that no such termination will entitle Licensee to a refund of any portion of the License Fee or maintenance fees: (i) Licensee fails to pay any undisputed amount due to SCPDC within thirty (30) days after SCPDC gives the Licensee written notice of such non-payment; (ii) Licensee is in material breach of any non-monetary term, condition or provision of Agreement, which breach, if capable of being cured, is not cured within thirty (30) days after SCPDC gives Licensee written notice of such breach; or (iii) Licensee becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes; or (iv) SCPDC elects to refund Licensee's fees.

(c) This agreement is subject to the availability and appropriation of budgeted funds by the parties, and upon an occurrence of non-appropriation by either party, this Agreement shall terminate immediately.

9.3 **EFFECT OF TERMINATION.** If any Termination Event occurs, termination will become effective immediately or on the date set forth in the written notice of termination. Termination of this Agreement will not affect the provisions regarding Licensee's or 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. Within fourteen (14) business days after the date of termination or discontinuance of this Agreement for any reason whatsoever, Licensee shall return any copies of the SCPDC Software, derivative works and all copies thereof, in whole or in part, all related Documentation and all copies thereof, and any other Confidential Information in its possession. Upon termination

of this Agreement, Licensee shall cause the SCPDC Software to be removed from all computer units, including desktops and laptops, in the Licensee's office and from the computer units of third-party contractors performing work for Licensee. Licensee shall furnish SCPDC with a certificate signed by the City Manager of Licensee verifying that the same has been done.

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

SECTION 10. NON-ASSIGNMENT

10.1 Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Licensee, 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 SCPDC, 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.

SECTION 11. NOTICES

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

To: South Central Planning and
Development Commission
Address: 5058 West Main St.
Houma, LA 70360

To: City of Angleton
ATTN: City Secretary
Address: 121 S. Velasco
Angleton, TX 77515

AND TO:
J. Grady Randle, City Attorney
Randle Law Office, LTD, L.L.P.
Address: 820 Gessner, Suite 1570
Houston, TX 77024

SECTION 12. MISCELLANEOUS

12.1 **VIRUSES AND DISABLING DEVICES.** Neither SCPDC Software nor any enhancements, modifications, upgrades, updates, revisions or releases thereof shall contain (i) any mechanism such as a "trap door", "time bomb", or "logic bomb", software protection routine or other similar device, that would enable SCPDC to disable the Software or make the Software inaccessible to Licensee after the Software is installed; or (ii) to the best of SCPDC's knowledge, any computer "virus", "worm" or similar programming routine.

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

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

12.4 SEVERABILITY. 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.

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

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

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

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

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

12.10 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 Texas certified mediator selected by mutual agreement of the parties.

Mediation: The parties agree to use mediation for dispute resolution prior to and formal legal action being taken on this Agreement. This provision does not prohibit a party from seeking relief in a Court of competent jurisdiction.

Venue and Governing Law: Venue of this contract shall be Brazoria County, Texas, and the law of the State of Texas shall govern.

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

12.12 **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, except as provided in Section 8.1 with respect to the definition of "Confidential Information."

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF ANGLETON

SOUTH CENTRAL PLANNING AND
DEVELOPMENT COMMISSION, INC.
THROUGH ITS AGENT, CAPCOG

By:

By:

John Wright, Mayor

Betty Voights, 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

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

Specific system capabilities will support the following departmental activities with end-user interfacing:

- Permitting and building inspections- "e-ticket" generation to request inspections sent directly to the inspectors
- Health inspections of restaurants and food service providers - Restaurant owner or manager can retrieve prior inspection reports and see pass/fail information.
- Code Enforcement - generation of "e-ticket" for citizen to submit concern, system support to provide Code Enforcement officer to correspond with resident and document enforcement actions.
- Rental registrations and inspections
- Subdivision development
- Plat applications and processing
- Re-Plat applications and processing
- Variance requests
- Re-Zoning requests
- Other issues - City Hall facility maintenance, pre-development meetings, facilitating Planning & Zoning Commission meetings, providing reports to Boards, Commissions, and City Council, responding to open records requests consistent with FOIA, hosting pre-construction meetings, processing and approving right-of-way user permits, etc.

System attributes include the following features:

- Paperless operation
- 100% system data storage support
- Ability to export data reports
- Customer interface, so that external users can access information such as building and health inspection pass/fail info and reports and payment information.
- workflow progression in real time marked by user.
- Ease of system integration when City converts to new accounting system.
- Ability to reconcile financial info between development services software and city's accounting system.
- Plan for data input and storage during system conversion and migration of historical data.
- System should be implemented in a manner that supports continuous improvement, should expansion to system capabilities be necessary.

Integrating the SCPDC MyGovernmentOnline System configuration will achieve the following:

- Converting to a system that can support all areas of responsibility for the DS.
- **Health inspections** - inspection results accessible to restaurant owner.
- **Building Inspections** - scheduling, inspection results, re-inspections.
- **Rental Registration and Inspection** - rental property annual registration and inspection reporting; and status in real-time accessible to applicant.
- **Permitting** - accessible to applicant.

- **Rezone, Replat and Variance applications** - checklist of documents required where application's submit button is enabled when all attachments are uploaded to complete application.
- Code Enforcement - all communication with residents concerning CE issues entered and saved into new system.
- Removing all subsidiary reporting and process redundancy. Example: Currently, health inspection status information is maintained in various spreadsheets - not in any licensed software.
- All applications completely digital with signature capability (where applicable) with updated City logo. All applications that require supporting documentation cannot be submitted until all documents are uploaded.
- Software app for inspectors to use on City-issued iPad while in the field.
- Kiosk at City Hall (to be provided by municipality) operable by external parties to apply for permits, request inspections, etc.

B. LICENSE FEE

1. MyGovernmentOnline:

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.

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

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

The Jurisdiction has agreed to the 501-1000 Permit Volume package. It is understood this will be billed on a levelized billing system of \$500.00 monthly. If anytime during a calendar year the total volume of permits exceeds the packages permit volume, Licensee shall pay, in addition to its package Rate Per Permit fee, the Overage Rate shown in the Schedule above. Permit volume packages may be adjusted annually. At the end of a permit volume year if the jurisdiction's permit volume exceeds 20% of the max permit volume number of their currently subscribed package the jurisdiction shall automatically subscribe to the package that the total new permit volume count places them in.

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

C. OTHER FEES

1. **ON-SITE VISITS:** Authorized On-Site Visits: On-sites visits shall be authorized by the Licensee and will be reimbursed to the SCPDC for costs of lodging, meals, and transportation incurred during each visit. Reimbursements will be in accordance with the current U.S. General Services Administration (GSA) per diem rates applicable to the visit location. Additionally, a 20% administrative fee will be applied to the total reimbursable expenses.

2. **INTEGRATION FOR ONLINE CREDIT CARD OR ACH TRANSACTIONS:** Existing Credit Card Vendor: \$100.00 one-time fee; New Credit Card Vendor: \$500.00 one-time fee.

3. **HISTORIC DATA IMPORTS:** Imports requiring 20 hours of staff time or less free of charge. Imports requiring more than 20 hours of analyst time are subject to a custom quote.

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

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

EQUIPMENT SITE, USER NAME, AND PERSONAL ACCESS PASSWORD

SECTION 1. EQUIPMENT SITE

1.1 The following is the Equipment on which Licensees may use the software:

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

SECTION 2. USER NAME AND PERSONAL ACCESS PASSWORD

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

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

MAINTENANCE AND SUPPORT

SECTION 1. DEFINITIONS

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

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

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

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

1.5 "RESPONSE CENTER AND CONTACT PROCEDURE" shall mean:

Address: 5058 West Main Street
Houma, LA 70360

Hours of Operation: 8:00 AM to 4:30 PM

Telephone: 1 (866) 957-3764

Contact Information:

E-mail: support@mygovernmentonline.org

Ryan Hutchinson,
Chief Technology Officer

SECTION 2. TERM AND TERMINATION

2.1 SCPDC's provision of Maintenance and Support to Licensee will commence on the Effective Date and will continue for an initial term of two (2) years. Maintenance and Support will automatically renew at the end of the initial term and any subsequent term for a renewal term of **one (1) year** unless Licensee has provided 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.

SECTION 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 the MyGovernmentOnline system. SCPDC will provide 24-hour emergency service support, after hours cell numbers are accessed through the IVR menu, for Licensee's staff and Licensee's customers by SCPDC's technical support personnel. SCPDC will offer to Licensee new versions of MGO Software as they become available. Upon Licensee's request SCPDC will attempt, so long as practicable, to convert Licensee's current permit data for use with SCPDC Software. Upon Licensee's request SCPDC will, as long as practicable, will perform regularly scheduled exports of Licensee's permit and inspection data to Licensee's database. Within SCPDC's capabilities, SCPDC will perform customization of SCPDC Software based on Licensee's specific jurisdiction. Whenever possible, SCPDC will provide features in the SCPDC Software allowing Licensee 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 SCPDC Software, and upon Licensee's request, SCPDC will provide Licensee with customized reports. The client will be expressly forbidden from creating add-ons or feature changes to that version or disclose the source code to any third party.

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

3.2 BASIC MAINTENANCE. Basic Maintenance means that 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 Licensee Site. In such event that on-site support is agreed to be provided by both the Licensee and SCPDC, then Licensee will reimburse SCPDC for all related traveling expenses and costs for board and lodging.

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 SCPDC Software. These services will be billed to Licensee at SCPDC's then-current rates. Causes which are not attributable to SCPDC include but are not limited to:

(a) **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;

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

(c) Modification, alteration or addition or attempted modification, alteration or addition of the Software undertaken by persons other than SCPDC or SCPDC's authorized representatives;

(d) Software programs made by Licensee or other parties.

SECTION 4. RESPONSIBILITIES OF LICENSEE

SCPDC's provision of Maintenance and Support to Licensee is subject to the following:

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

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

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

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

SECTION 5. MAINTENANCE FEE

5.1 For Licensee the maintenance fees are waived and the license fees cover all costs for maintenance and support for the terms of this Agreement.

SECTION 6. ASSIGNMENT OF DUTIES

6.1 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 Licensee's consent, which consent shall not be unreasonably withheld or delayed.

SECTION 7. PROJECT ABANDONMENT

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

SECTION 8. LICENSEE DATA

8.1 Upon the client’s written request, SCPDC agrees to provide all hosted client data to the client electronically once a calendar year in either the existing database format or CSV format. Upon Licensee request, these transfers can be automated to take place on a regular schedule. 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 Licensee’s data. Licensee expressly agrees to maintain on its site and under its care a current copy of Licensee’s permitting data.

SECTION 9. ROLE OF AGENT

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

Accepted:

City of Angleton, Texas

By: John Wright, Mayor

Date: _____

Witness

Date: _____

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

By: Betty Voights, Executive Director

Date: _____