

RESOLUTION NO. 18-10

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AUTHORIZING THE CITY OF APACHE JUNCTION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH SOUTH CENTRAL PLANNING AND DEVELOPMENT COMMISSION ("SCPDC") FOR LICENSING SCPDC SOFTWARE KNOWN AS "MYGOVERNMENTONLINE".

WHEREAS, South Central Planning and Development Commission, a regional planning commission and political subdivision of the State of Louisiana, created by law in 1978, has developed a suite of software to support its delivery of building and planning services and provide citizens digital access to the services; and

WHEREAS, South Central Planning and Development Commission, has sought to share the maintenance and development cost of this program, to support continual development, improvement, and additional features, with other governmental entities, in order that all member entities can share in the benefits of a lower cost, highly functional software; and

WHEREAS, the City of Apache Junction seeks to offer its citizens the best and most efficient services available and seeks to expand the services available online at a reasonable cost,

WHEREAS, it is the intention of the City of Apache Junction and South Central Planning and Development Commission to officially enter into an intergovernmental agreement; and

WHEREAS, pursuant to A.R.S. § 11-952(A), public entities may enter into intergovernmental agreements with other municipalities and governmental entities for joint or cooperative activities; and

WHEREAS, the Parties have crafted a written agreement in the form of an intergovernmental agreement which formalizes the arrangement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION ARIZONA, AS FOLLOWS:

- 1) The mayor and city council approve the form of the intergovernmental agreement for "Licensing SCPDC Software" set forth in Attachment A and the mayor is hereby authorized to sign the agreement on behalf of the City.
- 2) The city manager and/or his designee is authorized and directed to take all steps necessary to carry out the purpose and intent of this resolution and to fulfill all the duties required under the agreement.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, THIS ____ DAY OF _____, 20__.

SIGNED AND ATTESTED TO THIS ____ DAY OF _____, 20__.

JEFF SERDY
Mayor

ATTEST:

KATHLEEN CONNELLY
City Clerk

APPROVED AS TO FORM:

RICHARD J. STERN
City Attorney

ATTACHMENT A

**INTERGOVERNMENTAL AGREEMENT
FOR LICENSING SOUTH CENTRAL PLANNING DISTRICT COMMISSION
SOFTWARE**

THIS AGREEMENT is entered between the CITY OF APACHE JUNCTION, an Arizona municipal corporation, ("Licensee") and the SOUTH CENTRAL PLANNING AND DEVELOPMENT COMMISSION, a Louisiana political subdivision, ("Licensor" and "SCPDC"), both here often collectively referred to as the "Parties" or individually as a "Party".

RECITALS & PURPOSE

- A) SCPDC was established in 1973 and created by law in 1978 under Louisiana State Act 472 which allows its governmental member entities to come together through SCPDC to provide long range planning, act as a state and federal liaison, provide guidance and study to current issues affecting government, and provide services to business and citizens.
- B) SCPDC has created a unique suite of government management software modules collectively called MyGovernmentOnline ("MGO") software (the "SCPDC Software"). This intergovernmental agreement ("IGA") is entered into pursuant to A.R.S § 11-952 and Louisiana State Code§ Article 7 14.C to license the use of the SCPDC Software.
- C) Licensee shall participate in partnership with SCPDC in the continued growth and expansion of the SCPDC Software through continued feedback and analysis with the purpose to better the software and services for all partnered jurisdictions for a public good.
- D) Set forth below are the terms and conditions of this IGA.

AGREEMENT

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

1. DEFINITIONS

1.1 "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 IGA.

1.2 "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.

1.3 "EFFECTIVE DATE" means the later of the dates on which Licensee and SCPDC have signed this IGA.

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

1.5 "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, My Permit Now version X.0 (Major Update) and My Permit Now version 0.Y (Minor Update). SCPDC is the sole determiner of the availability and designation of an update as a "Major" or "Minor Update". Where used herein "Updates" shall mean "Major" or "Minor Updates" interchangeably.

1.6 "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.

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

1.8 "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.

1.9 "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, Solar (photovoltaic system water heating) permits, grading permit, Park Model sets, Manufactured Home sets, Arizona Rooms, and sign permit. Multiple permits listed under one number, such as building permits with separate fees for mechanical, electrical and plumbing, issued under one number, shall not be considered a single permit when calculating funds owed SCPDC pursuant to the terms of this IGA.

1.10 "LICENSE FEE(S)" shall mean all payment due pursuant to this IGA, including the permit volume package amount and the payments due for the elected add on modules as detailed in Schedule A.

2. LICENSE, DELIVERABLES AND COPIES

2.1 LICENSE GRANT.

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

(b) OWNERSHIP. SCPDC and its Licensors solely own all right, title and interest in and to SCPDC's Software, and reserve all rights therein not expressly granted under this IGA. 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 SCPDC Software ("Add-On Products") without SCPDC's express written permission.

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

2.2 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@scpdc.org) and password for each user of the system in the employ and under control of Licensee.

2.3 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.

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

4. LICENSE FEE

4.1 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.

4.2 TAXES. Licensee agrees to pay or reimburse SCPDC for all federal, state, parish, or local sales, use, personal property, payroll, excise or other taxes, fees, or duties arising out of this Agreement or the transactions contemplated by this IGA (other than taxes on the net income of SCPDC).

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

5. MAINTENANCE AND SUPPORT. Licensee agrees to pay Fees according to Schedule A. For so long as Licensee is current in the payment of all fees in Schedule A, with respect to each software module, Licensee will be entitled to Maintenance and Support for each software module as set forth in Schedule C attached hereto. Failure to pay fees with respect to any software module shall be deemed a material breach of this IGA 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 IGA.

6. LIMITED WARRANTY AND LIMITATION OF LIABILITY

6.1 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 IGA 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 IGA 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 IGA will not be enforceable.

6.2 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 IGA, including maintenance and support. SCPDC specifically disclaims all implied warranties of merchantability, fitness for a particular purpose and noninfringement with respect to the software, documentation and said other materials and services, and with respect to the foregoing. In addition, 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.

6.3 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 IGA.

6.4 ALLOCATION OF RISK. The provisions of this Section 6 allocate risks under this IGA between Licensee and SCPDC. SCPDC's pricing reflects this allocation of risks and limitation thereof in accordance with the provisions of this IGA and not liability.

6.5 CLAIMS. No action arising out of any breach or claimed breach of this IGA or transactions contemplated by this IGA may be brought by either Party more than one (1) year after the cause of action has accrued. For purposes of this IGA, a cause of action will be deemed to have accrued when a party knew or reasonably should have known of the breach or claimed breach.

6.6 LIMITATION. The foregoing obligations shall not apply to the extent the infringement arises as a result of modifications to the Software made by any third party or Licensee.

6.7 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.

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

7. CONFIDENTIALITY

7.1 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 IGA 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 IGA reflect consideration received by Licensee in return for being an early user of the Software. However, neither Party bears any responsibility for safeguarding information that: (i) is publicly available, subject to a public records request pursuant to revised Louisiana Revised Statute § 44:1 and Arizona Revised Statute § 39-121, *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.

7.2 INJUNCTIVE RELIEF. In the event of actual or threatened breach of the provisions of Section 7.1, the non-breaching party will have no adequate remedy at law and will be entitled to immediate and injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

8. TERM AND TERMINATION

8.1 TERM. This IGA will take effect on the Effective Date and will remain in force for an initial term of twenty-six (26) months thereafter. This IGA will automatically renew for 12-month periods following the end of the initial term, for up to four (4) renewals (48 months), unless terminated in accordance with this IGA.

8.2 TERMINATION. This IGA may be terminated as follows:

(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 calendar 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) calendar 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 IGA, which breach, if capable of being cured, is not cured within thirty (30) calendar 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.

8.3 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 IGA 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 IGA. Within fourteen (14) calendar days after the date of Termination or discontinuance of this IGA 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 IGA, 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 an executive officer of Licensee verifying that the same has been done.

8.4 In the event of the Termination or nonrenewal of this IGA, SPCDC warrants that the information stored by SPCDC as a result of Licensee use of the MyGovernmentOnline will be available to Licensee.

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

10. NOTICES. Any notice required or permitted under the terms of this IGA 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) calendar day after the moment of transmission by facsimile.

To: South Central Planning &
Development Commission

To: The City of Apache Junction
Development Services Department

Address: 5058 West Main St.
Houma, LA 70360

Address: 300 E Superstition Blvd., Bldg D
Apache Junction, AZ 85119

Fax: 985-851-4472

Fax: 480-982-7010

AND A COPY TO: Joel Stern, City Attorney
City of Apache Junction
Fax: 480-982-5883

300 E Superstition Blvd.
Apache Junction, AZ 85119

11. MISCELLANEOUS

11.1 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.

11.2 FORCE MAJEURE: Neither Licensee nor Licensors, as the case may be, shall be considered not to have performed its obligations under this IGA in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with applicable laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, acts of a public

enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting the obligations under this IGA. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular subcontractors, vendors or investors desired by Licensor in connection with the obligations under this IGA. Licensor agrees that Licensor alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) calendar days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

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

11.4 SEVERABILITY: City and Licensor each believe that the execution, delivery and performance of this IGA Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this IGA is declared void or unenforceable (or is construed as requiring Licensee to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this IGA and this IGA shall otherwise remain in full force and effect; provided that this IGA shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed IGA (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this IGA, as reformed.

11.5 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 IGA, regardless of any failure of SCPDC to object to such terms, provisions or conditions.

11.6 AMENDMENTS TO THIS IGA. This IGA may not be amended, except by a writing signed by both Parties.

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

11.8 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.

11.9 APPLICABLE LAW AND VENUE: The terms and conditions of this IGA shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this IGA, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of this IGA or to recover any damages for and on account of the breach of any term or condition in this IGA, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

11.10 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.

11.11 DISPUTE RESOLUTION. The Parties have entered into this IGA voluntarily and in good faith. As a result, if any dispute, claim or controversy ("dispute") arises between them, unless otherwise provided in this IGA, they agree that they will first attempt to resolve the dispute by entering into nonbinding mediation with a mediator.

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

11.13 ENTIRE AGREEMENT: This Agreement and any attachments represent the entire agreement between Licensee and Licensor and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this IGA shall be valid unless made in writing and signed by the Parties hereto. Written and signed amendments shall automatically become part of the Supporting Documents, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

11.14 TIME IS OF THE ESSENCE: Time is of the essence with respect to all provisions in this IGA. Any delay in performance by either Party shall constitute a material breach of this IGA.

11.15 CONFLICTS OF INTEREST: This Agreement is subject to, and may be terminated by Licensee in accordance with, the provisions of A.R.S. § 38-511.

11.16 PROHIBITION TO CONTRACT WITH LICENSORS WHO ENGAGE IN BOYCOTT OF THE STATE OF ISRAEL. The Parties acknowledge A.R.S. §§ 35-393 through 35-393.03, as amended, which forbids public entities from contracting with licensors who engage in boycotts of the State of Israel. Should Licensor under this IGA engage in any such boycott against the State of Israel, this IGA is automatically terminated. Any such boycott is a material breach of contract and will subject Licensor to monetary damages, including but not limited to, consequential and liquidated damages.

IN WITNESS WHEREOF, the parties have executed this IGA.

CITY OF APACHE JUNCTION

SOUTH CENTRAL PLANNING AND
DEVELOPMENT COMMISSION

By:

By:

Jeff Serdy, City Mayor

Kevin Belanger, Chief Executive Officer

Date

Date

Attestation

Attestation

Kathy Connelly, City Clerk

Date: _____

Date: _____

APPROVED AS TO FORM:

R. Joel Stern, City Attorney

APPROVED AS TO FORM:

SCPDC Attorney

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing was subscribed and sworn to before me this _____ day of _____,
20____, by _____ as _____ of South Central Planning and
Development Commission, a Louisiana regional planning and development commissions created
in 1973 by Executive Order No. 27 of Governor E. Edwards and established in 1978 by State Act
472.

Notary Public
My Commission Expires:

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

The foregoing was subscribed and sworn to before me this _____ day of _____,
20____, by Jeff Serdy, as Mayor of the City of Apache Junction, Arizona, an Arizona municipal
corporation.

Notary Public
My Commission Expires:

SCHEDULE A

INTERGOVERNMENTAL CONTRACT South Central Planning and Development Commission and Jurisdiction Government

SOFTWARE AND LICENSE FEE

A. SOFTWARE USE

Licensee use of SCPDC's MyGovernmentOnline System, Standard Configuration

B. LICENSE FEE

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

			MONTHLY RATE		
Permit Volume	Overage Rate	Permits	Planning & Zoning	Code Enforcement	Addressing / GIS Integration
0 - 100	\$10.00	\$56.25	\$50.00	\$50.00	\$230.00
101 - 500	\$10.00	\$260.42	\$156.25	\$50.00	\$230.00
501 - 1000	\$10.00	\$500.00	\$300.00	\$75.00	\$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 Planning & Zoning, Solution Center, Addressing / GIS Integration may be activated by request during the term of this IGA 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.

No software and license fee payments shall be made by Licensee until the software “Go-live” date has been met and the Licensee is 100% satisfied with the software and its integration functionality with the current system processes Licensee uses. The payment schedule listed under this schedule shall only be enforceable once the Licensee completes formal user acceptance testing and certifies the software is operable for production use. After the “Go-live” date, if a serious flaw in the software is found to the extent that the Licensee decides to cease use of the MGO software and fall back to their existing software until the issue can be addressed, payment obligations will cease until a new “Go-live” date can be set. The initial “Go-live” date of all elements of the software is April 2, 2019. This “Go-live” date may be extended by mutual agreement in writing signed by Licensor and Licensee. Failure to meet this deadline tolls any duty of Licensee to pay any amount to Licensor. The Parties agree that failure to meet this deadline is a breach of contract, subject to immediate termination by Licensee. Licensee agrees to pay Licensor for verifiable and reasonable per diem reimbursable expenses for travel and training whenever onsite visits are requested and/or agreed to by Licensee. Costs subject to reimbursement are lodging, transportation and meals.

Other Fees:

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

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

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

Additional Modules:

Reoccurring inspections and Public Works Modules are available by custom quote.

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

SCHEDULE B

INTERGOVERNMENTAL USE IGA South Central Planning and Development Commission and Jurisdiction

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

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

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

B.2. At the execution of this IGA, 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

INTERGOVERNMENTAL USE IGA South Central Planning and Development Commission and Jurisdiction

MAINTENANCE AND SUPPORT

DEFINITIONS

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

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

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

1.4 "RESPONSE TIME" means the elapsed time between the receipt of a service call and the time when 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	Hours of Operation
5058 West Main Street	8:00 a.m. to 4:30 p.m.
Houma, LA 70360	

Contact Information

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

E-mail: support@scpdcl.org

2. **TERM AND TERMINATION.** SCPDC's provision of Maintenance and Support to Licensee will commence on the Effective Date and will continue for an initial term of twenty four (24) months. Maintenance and Support will automatically renew at the end of the initial term and any subsequent term for a renewal term of twelve (12) months unless Licensee has provided SCPDC with a written termination notice of its intention not to renew the Maintenance and Support at least ninety (90) calendar 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 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 MyGovernmentOnline 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. 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 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:

3.4.1 Accident. Unusual physical, electrical or electromagnetic stress; neglect; misuse; failure or fluctuation of electric power, air conditioning or humidity control; failure of

rotation media not furnished by SCPDC; excessive heating; fire and smoke damage; operation of the Software with other media and hardware, software or telecommunication interfaces not meeting or not maintained in accordance with the manufacturer's specifications; or causes other than ordinary use;

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

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

3.4.4 Software programs made by Licensee or other parties.

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.

5. **MAINTENANCE FEE.** For Licensee the maintenance fees are waived and the license fees cover all costs for maintenance and support for the terms of this IGA.

6. **ASSIGNMENT OF DUTIES.** SCPDC may not assign its duties of Maintenance and Support to a third party.

7. **PROJECT ABANDONMENT** – Should SCPDC abandon development and support of a MyGovernmentOnline module and can no longer fulfill its contractual obligations pursuant to

the IGA, the last stable source code release of that module 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.

8. LICENSEE DATA – 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.

IN WITNESS WHEREOF, the parties have executed this IGA.

CITY OF APACHE JUNCTION

SOUTH CENTRAL PLANNING AND
DEVELOPMENT COMMISSION

By:

By:

Jeff Serdy, City Mayor

Kevin Belanger, Chief Executive Officer

Date

Date

Attestation

Attestation

Kathy Connelly, City Clerk

Date: _____

Date: _____

APPROVED AS TO FORM:

R. Joel Stern, City Attorney

APPROVED AS TO FORM:

SCPDC Attorney

) ss.

COUNTY OF _____)

The foregoing was subscribed and sworn to before me this _____ day of _____, 20____, by _____ as _____ of South Central Planning and Development Commission, a Louisiana regional planning and development commissions created in 1973 by Executive Order No. 27 of Governor E. Edwards and established in 1978 by State Act 472.

Notary Public
My Commission Expires:

STATE OF ARIZONA)

) SS.

COUNTY OF PINAL)

The foregoing was subscribed and sworn to before me this ____ day of _____, 20____, by Jeff Serdy, as Mayor of the City of Apache Junction, Arizona, an Arizona municipal corporation.

Notary Public
My Commission Expires: