REPORT TO CITY COUNCIL

DATE: AUGUST 23, 2023

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: NATHAN HAMBURGER, CITY MANAGER

BY: DENICE THOMAS, COMMUNITY DEVELOPMENT DIRECTOR
LUKAS QUACH, BUILDING OFFICIAL

SUBJECT: APPROVE INTERGOVERNMENTAL AGREEMENT WITH SOUTH CENTRAL PLANNING AND DEVELOPMENT COMMISSION (SCPDC) FOR LICENSING AND IMPLEMENTING MYGOVERNMENTONLINE (MGO) PERMITTING SYSTEM

Since 2006, the City has been using the current Energov permitting software to track development permits in the Building and Safety Department. Around 2015, the permitting system was expanded to include Planning, Public Works, and Business License in an effort to be more efficient by integrating the tracking of the different departments to improve the various Departments' abilities to process building permits, business licensing, and code enforcement. However, during this time, the small permitting company was acquired by a large international technology solution company (Tyler Technologies) with the permitting system being only one of the dozens of Tyler Technologies product lines. With the disruption associated with the Energov business in transition, City staff began to face support challenges. Furthermore, with each year and each versioning update, the system requires more of the City's staff time, IT infrastructure, expenditure, and other IT resources.

Working with our current permitting system has been an extreme challenge. It has proven to be cumbersome for staff to use, cannot integrate online payments, does not allow for easy issuance of reports, and does not allow for effective tracking of effective inter-departmental reviews and approvals. Further, it does not allow for online use by the public.

With the onset of COVID, it became apparent that due to in-person facilities being closed to the public, that an update to the City's outdated permitting system was necessary. The Community Development Department put together a submit-by-email system to take in applications and plans, as well as to coordinate credit card payments with the Finance Department. However, this process is extremely time-consuming and takes multiple steps per transaction between the City departments, as well as the applicants involved. City staff made several attempts to work with the current system provider for online solutions, but has not had success. Therefore, it became readily apparent that the City and its customers would greatly benefit from the integration and use of cloud-based electronic

permitting and plan review technology and processes since these would be more convenient, efficient, and transparent.

Staff identified the features that a new online permitting and plan check software system should have:

- Cloud-based
- Full-featured
- Enables online payments via credit cards
- Tracks applications from submittal to job completion
- Allows in-house and consultant reviews
- Benchmarks application processing times
- Integrates with the City's GIS system
- Integrates with the City's financial system
- Easy to use regarding the input of data, running reports, fees, etc.

In 2022, staff began exploring the different permitting systems available on the market. The investigation began with the largest providers (industry leaders) such as Accela, Clarity, and Central Square (formerly Trackit). In general, these systems are more robust, similar to the City's Tyler Technologies permitting software, requiring more resources to implement and maintain, and are generally geared towards serving cities much larger than the City of Agoura Hills.

Staff received demonstrations from more than half a dozen smaller permitting system vendors that are cloud-based with online plan review capability and an easy-to-use customer interface. They include Civicplus, Cloudpermits, iWorq, VivaCivic, Opengov, Govbuilt, and MGO. Opengov, Govbuilt, and MGO were short-listed to provide demonstrations to staff from various divisions of Building and Safety, Planning, Code Enforcement, and Public Works. Collectively, staff selected MGO as the solution that will not only replace the software the City is currently using, but also significantly improve internal operations, streamline processes, and improve customer interactions.

MGO is a software that was developed by the South Central Planning and Development Commission in Louisiana with Federal funds, has been in use for over 17 years, and has hundreds of implementations in 22 states. Due to the fact that it was created by the government for government use, it is non-profit, and, as such, the fee structure is very different than other for-profit vendors - there is a licensing fee that is based on the City's permit volume. There is no additional charge for setup/implementation, maintenance, training, or phone support costs, except reimbursement for lodging and travel cost for MGO staff to be onsite for assistance with implementation and training.

Once the MGO software is operational, the following features will be available to staff as well as the general public:

- o 24-Hour Customer Portal - Submit and pay for permits through a web portal. Review applications, permits, payments, inspections, etc. Track and monitor the status of applications. Receive and print permits.

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- o Mobile Inspections - Request inspections via mobile device and view inspection reports online.
- o Digital Plan Review - Go green with a completely paperless plan review process to track all revisions. Allow multiple users and departments to review documents simultaneously.
- o Automated Work Flow - Alerts residents and departments of changes in status and required information that could hold up progress.
- o Customized Reports - Have custom reports created without additional cost.
- o Unlimited Support - A toll-free support number [1-866 95 PERMIT (3764)] is available for all staff and customer portal users.

Staff consulted with the City Attorney's Office to expedite the procurement of the MGO system to take advantage of the benefits noted above. It was determined that under Section 2704(a)(7) of the City of Agoura Hills Municipal Code, "the purchase for specialized computer software, computer equipment and computer or information technology maintenance service" is exempt from the bidding procedure provisions of Section 2702. As such, it was determined that with this information, the City Council could approve staff's request to use MGO's product for the City of Agoura Hills, in accordance with City of Agoura Hills Municipal Code Section 2704, "Exemptions".

A copy of the SCPDC Intergovernmental Agreement for MGO, which includes the scopes of work for each module and the cost breakdown, are provided as an attachment.

Staff estimates that the implementation timeline is approximately six to nine months and expects to go live in early summer of 2024, just in time for meet the mandate of State Senate Bill (SB) 379. SB 379 requires the adoption of an online platform that can verify code compliance and issue permits in real time for a residential solar energy system that is no larger than 38.4 kilowatts. This requirement must be met by September 30, 2024, for cities with a population of 50,000 or less. The City would also be in compliance with State Assembly Bill (AB) 2234, which requires the City to provide an online option to apply, complete, and retrieve applications by January 1, 2028.

First-year costs would include initial set-up, training and data migration, and is estimated to be $30,000, which is already allocated in the budget. Once the system is up and running, the monthly cost will be approximately $2,000, or $24,000 annually.

RECOMMENDATION

Staff respectfully recommends that the City Council approve the intergovernmental agreement with South Central Planning and Development Commission (SCPDC) for licensing and implementing the Mygovernmentonline (MGO) permitting system.

Attachment: SCPDC (MGO) Intergovernmental Agreement

AGREEMENT FOR CONSULTANT SERVICES
WITH THE CITY OF AGOURA HILLS

NAME OF CONSULTANT: South Central Planning and Development Commission (SCPDC)

RESPONSIBLE PRINCIPAL OF CONSULTANT: Attn: Ryan Hutchinson

CONSULTANT'S ADDRESS: 5058 West Main St. Houma, LA 70360

CITY'S ADDRESS: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301
Attn: City Manager

PREPARED BY: Lukas Quach

COMMENCEMENT DATE: August 23, 2023

TERMINATION DATE: On going

CONSIDERATION: Contract Price
Not to Exceed: $$30,000 /yr

ADDITIONAL SERVICES *(Describe Services, Amount, and Approval):*

_____

_____

_____

_____

_____

Date: _____ Amount: $_____ Authorized By: _____

(Not to Exceed 10% of Contract Price) City Manager

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INTERGOVERNMENTAL AGREEMENT
FOR SCPDC SOFTWARE LICENSE AND SERVICE AGREEMENT

Sec. 1. Parties and Purpose

1.1. City of Agoura Hills, a Political Subdivision of the State of California domiciled in Los Angeles County ("Licensee").

1.2. 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 current issues affecting government, and provide services to business and citizens.

1.3. SCPDC has created MyGovernmentOnline, software (the "SCPDC Software") and this contract is entered into among Licensee and SCPDC to license Licensee to use specified modules of the SCPDC Software under certain terms and conditions.

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

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

2.   DEFINITIONS

2.1   "CONFIDENTIAL INFORMATION" means 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. All Licensee Data, as defined herein, is Confidential Information.

2.2   "DOCUMENTATION" means any on-line help files, instruction manuals, training materials, 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 by SCPDC.

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

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

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

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

2.7 "SOFTWARE" means the computer software programs and modules specified in Schedule A and otherwise provided for Licensee use pursuant to this Agreement, as enhanced, modified, corrected, upgraded, added, customized, or otherwise changed by SCPDC pursuant to the requirements of the Contract Documents.

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 service permits, new construction permit, building permit, structure renovation permit, mechanical permit, plumbing permit, gas permit, electrical permit, and sign permit.

3. LICENSE, DELIVERABLES AND COPIES

3.1 LICENSE GRANT.

(a) Subject to the terms of this Agreement, Licensor grants to Licensee a nonexclusive, nontransferable, royalty-free user license ("License") during the term of this Agreement to use the Licensor's Software, through Internet access only, solely for purposes of using the Licensor's products known collectively as MyGovernmentOnline Software Modules. The scope of the License encompasses Licensee's internal use of Licensor's Software in connection with providing services to Licensee's customers and includes the following purposes: (1) enabling members of the public to access Licensee's portal via the Internet to (A) electronically submit permit applications and associated documents to Licensee for review, (B) track the status of permit applications, and (C) schedule inspections and receive real-time notification of inspection results via email and phone messaging; and (2) enabling Licensee's employees, officials, and agents to (A) electronically receive, track, process, manage, research, and store applications for Licensee permits, and (B) obtain customized reports regarding permit applications and associated documents. Except as otherwise provided by Schedule A, the License 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 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 test instances, production instances, 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 develop products that interface or are intended for use with the SCPDC Software ("Add-On Products") with 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 Licensee.

3.2 DELIVERABLES. SCPDC shall provide an Internet accessible software service and solution that meets all the terms, conditions, specifications, and requirements set forth in this document (collectively, "Services"). All services shall be performed for the prices set forth in Schedule A. SCPDC shall provide maintenance and support of the Software under the terms and conditions set forth in Schedule C, Maintenance and Support. In providing the Services, SCPDC shall comply with any and all applicable local, State and federal laws, statutes, standards, policies, and regulations including, but not limited to, the Health Insurance Portability and Accountability Act of 1996, the Americans with Disabilities Act, the Stored Communications Act, 18 U.S.C. Sections 2701 through 2712, Civil Code Sections 1798.80 through 1798.84, and the California Consumer Privacy Act, Civil Code Section 1798.100, et seq.

3.3 COPIES. The License includes the right to copy and reprint Documentation, or portions thereof, for use with the Software in accordance with the rights granted hereunder including for backup/archival purposes, training, internal Licensee intranet posting and other uses consistent with the License. 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.

3.4   SECURITY OF LICENSEE DATA.   Without limiting SCPDC's obligation of confidentiality as further described herein, SCPDC shall be responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that comply with or are substantially similar to the security controls identified in the current version of NIST SP800-53, and that is designed to: (a) ensure the security and confidentiality of the Licensee Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Licensee Data; (c) protect against unauthorized disclosure, access to, or use of the Licensee Data; (d) ensure the proper disposal of Licensee Data; and, (e) ensure that all employees, agents, and subcontractors of SCPDC, if any, comply with all of the foregoing. In no case shall the safeguards of SCPDC's data privacy and information security program used to protect Licensee Data be less stringent than the safeguards used by SCPDC for its own data. As used in this Agreement, "Licensee Data" means and refers to any and all data made accessible to SCPDC by Licensee for any purpose including processing, handling, storing, and otherwise providing the Services.

Any and all cloud storage shall be in compliance with ISO/IEC 27001 - 27018, as applicable, or successor standards thereto. Verified cloud storage services provided by Amazon Web Services or Microsoft Azure, shall be deemed to comply with this section. The Services (including all data storage), shall be provided solely from within the continental United States and on computing and data storage devices residing therein.

In connection with SCPDC's processing of credit card information, then the SCPDC shall comply at all times with all applicable Payment Card Industry Data Security Standards (PCI-DSS). SCPDC agrees and warrants that it is responsible for the security of "cardholder data" that SCPDC possesses, stores, processes or transmits on behalf of the Licensee and Licensee's customers, and for any impact on the security of Licensee's cardholder data environment adversely affected by any failure of the SCPDC to maintain compliance with provisions of the PCI-DSS applicable to the Services.

In the event of any act, error or omission, negligence, misconduct, or breach that permits any unauthorized access to, or that compromises or is suspected to compromise the security, confidentiality, or integrity of Licensee Data or the physical, technical, administrative, or organizational safeguards put in place by SCPDC that relate to the protection of the security, confidentiality, or integrity of Licensee Data, SCPDC shall, as applicable: (a) notify Licensee as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with Licensee in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by Licensee; (c) in the case of PII, at Licensee's sole election, (i) notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.80, et seq., and Section 1798.100, et seq., or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (ii) reimburse Licensee for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required

monitoring services, for no less than twelve (12) months following the date of notification to such individuals; and (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; and, (f) without limiting SCPDC's obligations of indemnification, as further described in this Agreement, to the extent permitted by law, indemnify, defend, and hold harmless Licensee for any and all claims and liabilities , including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from Licensee in connection with the occurrence up to the limits of SCPDC's Cyber Liability policy required herein. At all times herein, SCPDC shall have and maintain cyber liability insurance as described in Schedule D attached hereto.

4.   LICENSE RESTRICTIONS. Except as otherwise provided in Schedule A, 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.

5.   LICENSE FEE, COMPENSATION FOR SERVICES, & EXPENSES

5.1   LICENSE FEE. In consideration of the license granted pursuant to Section 3.1. Licensee agrees to pay SCPDC the License Fee specified 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 SCPDC's sole 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.

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 and shall provide one another with a tax exemption certificate. 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   SERVICES. SCPDC shall provide all services as described in "Schedule A" for the fees described in "Schedule A".

5.4   EXPENSES. License Fee and the fees for services do not include Reimbursable Expenses. SCPDC will bill Licensee for identified Reimbursable Expenses and Licensee shall reimburse SCPDC for approved Reimbursable Expenses.

Reimbursable Expenses shall mean expenses incurred directly in connection with the services performed pursuant to this Agreement by SCPDC for travel and transportation, and that are agreed to in writing in advance by License. Lodging, airline costs, Mileage, and food reimbursement will be based on the Federal GSA per diem rate as found on GSA.gov. Travel expenses for car rental expenses shall be for actual cost. A 20% administrative fee is added to the total reimbursable costs.

5.5   INVOICES. All invoices under this Agreement shall be sent to the attention of

City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301

Payment will be processed according to the regular payment procedures of the Licensee.

6.   MAINTENANCE AND SUPPORT. There shall be no separate fee for maintenance and support. The annual License Fee includes all maintenance and support described in this Agreement and Schedule C.

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 and to license the Software for Licensee's use. SCPDC also warrants that no lawsuit or claim concerning the Software is currently pending.

To the extent permitted by law, SCPDC agrees to indemnify, defend, and hold harmless Licensee, its officials, officers, employees and agents ("Indemnitees") from and against any and all claims

and liabilities, including reasonable attorneys' fees, costs, and expenses incidental thereto ("Claims"), which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to the Services allegedly or actually infringing or misappropriating any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right. In the event that SCPDC is enjoined from providing the Services and such injunction is not dissolved within thirty (30) calendar days, or in the event that Licensee is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the access or use of the Services, then SCPDC shall, at its expense: (a) obtain for Licensee the right to continue using such Services; (b) replace or modify such Services so that they do not infringe upon or misappropriate such proprietary right and is free to be used by Licensee; or, (c) in the event that SCPDC is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, SCPDC shall reimburse to Licensee any prepaid fees and the reasonable cost associated with any transition services.

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 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 SCPDC'S INSURANCE LIMIT; PROVIDED, HOWEVER, NOTHING IN THIS SECTION 7.3 WILL AFFECT OR OTHERWISE LIMIT SCPDC'S INSURANCE OBLIGATIONS.

7.4   INSURANCE AND INDEMNITY. In connection with any and all services performed on Licensee's premises, including transportation to and from Licensee's premises, to the extent permitted by law, SCPDC will indemnify, defend (including payment of reasonable attorneys' fees), and hold Licensee, its officials, officers, employees and agents, harmless with respect to any and all claims, liabilities, damages, and losses for bodily and personal injury, death, and/or property damage, to the extent arising out of the acts, omissions, or willful misconduct of SCPDC, and/or its employees, officers, contractors, and/or agents, in connection with SCPDC's performance of this Agreement, to the fullest extent permitted by law.

In furtherance thereof, at all times herein, SCPDC shall have and maintain policies of commercial general and auto, and cyber liability insurance, and workers compensation, in such form and with such limits set forth in Schedule "D" attached hereto.

7.5   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.

8.   [Intentionally Omitted].

9.   CONFIDENTIALITY

9.1   CONFIDENTIAL INFORMATION.

To the extent permitted by law, 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. To the extent permitted by law, 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 public records request pursuant to applicable state statutes; (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 Confidence Information, or (v) required to be disclosed by order of a court or other governmental entity, the California Public Records Act, or subpoena. Nothing herein shall prevent routine discussions by the parties that normally take place in a "user group" context.

9.2   INJUNCTIVE RELIEF. In the event of actual or threatened breach of the provisions of Section 9.1 and 9.3, the non-breaching party may pursue its legal and equitable remedies.

9.3   LICENSEE DATA. In its performance of Contract Services, SCPDC may have access to Licensee Data consisting of certain records, data, or information that include the names, addresses,

telephone numbers, or other confidential or private information pertaining to Licensee's customers. SCPDC acknowledges and agrees that it does not have nor does it claim any ownership interest whatsoever in Licensee Data and that custody and title and all other rights and interests in Licensee Data are and shall remain in Licensee.

SCPDC is provided a limited license for the term of this Agreement to access Licensee Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display Licensee Data only to the extent necessary to provide the Services. SCPDC shall: (a) keep and maintain Licensee Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose Licensee Data solely and exclusively for the purpose of providing the Services in accordance with this Agreement and applicable law; (c) allow access to Licensee Data only to those employees and agents of SCPDC who are directly involved with and responsible for providing the Services; and, (d) not use, sell, rent, transfer, distribute, or otherwise disclose or make available Licensee Data for SCPDC's own purposes or for the benefit of anyone other than Licensee without Licensee's prior written consent. SCPDC may not utilize aggregated data derived from Licensee Data unless it has been made "anonymous" using of technology that irreversibly alters data in such a way that the data subject can no longer be identified directly or indirectly, either by the data controller alone or in collaboration with any other party, and such data is thereby rendered "anonymized data", as generally described in ISO 25237:2017, Sections 3.2 and 3.3.

9.4   RETURN OF LICENSEE DATA. To the extent permitted by law, in the event of the termination or nonrenewal of this agreement, SPCDC warrants that Licensee's Data and any information stored by SPCDC as a result of Licensee use of the SCPDC Software will be delivered to Licensee or shall be made available for download by Licensee for not less than sixty (60) days following expiration or termination of this Agreement.

10.   TERM AND TERMINATION

10.1   TERM. This Agreement will take effect on the Effective Date and will remain in force for a period of two (2) years following Final Acceptance ("Initial Term"). This Agreement will automatically renew for up to three (3), additional 12-month periods following the end of the Initial Term and following each subsequent annual term thereafter unless terminated in accordance with this Agreement.

10.2   TERMINATION. This Agreement may be 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. Licensee may terminate this Agreement for any reason, by providing not less than 90-day prior, written notice to SCPDC. SCPDC shall provide Licensee access to all stored data, documentation and confidential information produced by Licensee.

(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.

10.3   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) 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 an executive officer of Licensee verifying that the same has been done.

11.   NON-ASSIGNMENT AND SUBCONTRACTING.   Neither party may assign or otherwise transfer this Agreement nor any rights under this Agreement, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. SCPDC may not subcontract any performance required hereunder without Licensee's prior, written consent

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

To:	South Central Planning and Development Commission	To:	City of Agoura Hills
Address:	5058 West Main St. Houma, LA 70360	Address:	30001 Ladyface Court Agoura Hills, CA 91301

13.   MISCELLANEOUS

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

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

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

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

13.5   STANDARD TERMS OF LICENSEE. No terms, provisions or conditions of any purchase order, acknowledgment or other business form that 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.

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

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

13.8 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.

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

13.10 ENTIRE AGREEMENT. This Agreement (including the Schedules and any addenda hereto signed by both parties (all of which are incorporated by reference herein) 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. The provisions of this document shall govern over any inconsistent or conflicting provisions of any Schedule or other document made a part of this Agreement. Licensee shall not be bound by any online terms or conditions, or "click-through" license agreements.

13.11 GOVERNING LAW AND VENUE. This Agreement shall be governed by the laws of the State of California without regard for change of venue rules. Venue for any legal action arising out of this Agreement shall be the Superior Court for Los Angeles County or the United Stated District Court, Central District, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF AGOURA HILLS

SOUTH CENTRAL PLANNING AND DEVELOPMENT COMMISSION

_____
Chris Anstead,
Mayor

_____
Kevin Belanger,
CEO

_____
Date

_____
Date   8/11/2023

ATTEST:

_____
Kimberly M. Rodrigues, MMC
City Clerk

Date Approved by City Council: ____

SCHEDULE A
INTERGOVERNMENTAL AGREEMENT
South Central Planning and Development Commission and Jurisdiction Government

SOFTWARE AND LICENSE FEE
A. SOFTWARE USE

SCPDC'S MyGovernmentOnline Software Modules available for subscription under this agreement are: Permits and Licensing (MyPermitNow), Planning & Zoning, Solution Center (Code Enforcement), Addressing / GIS Integration. Each of these modules is a separate chargeable option. All modules include unlimited user accounts, field work order system, project and document management features. Unlimited reporting services.

B. LICENSE FEE

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

		MONTHLY RATE			
Permit Volume	**Overage Rate**	**Permits**	**Planning & Zoning**	**Code Enforcement**	**Addressing / GIS Integration**
0 - 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 <u>1001 - 2000</u> Permit Volume package. It is understood this will be billed on a levelized billing system of <u>$958.33</u> 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.

2. Planning & Zoning Module
   Monthly Cost: $575.00

3. Code Enforcement (Solution Center) Module
   Monthly Cost: $143.75

4. Addressing/GIS Integration
   Monthly Cost: $230.00

TOTAL MONTHLY COST OF ALL MODULES: **$1907.08**

Other Fees:

On-Site Visits: Reimbursement of lodging, transportation and meals, plus a 20% administrative fee, as defined in section 5.4.

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.

Reoccurring Septic Permits, Fire Marshal, and Public Works Modules available by 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. The first invoice will commence after the Project Go-Live date.

Implementation: There shall be no separate fee for implementation of SCPDC'S MyGovernmentOnline Software Modules except as outlined above in Other Fees. The annual License Fee includes implementation of the system.

SCHEDULE B
INTERGOVERNMENTAL AGREEMENT
SCPDC SOFTWARE LICENSE AND SERVICE AGREEMENT

EQUIPMENT SITE, USER NAME, AND
PERSONAL ACCESS PASSWORD

B.1.   At the execution of this Agreement, SCPDC shall provide a USER CREATION form to the Licensee to be used for account creation requests. Upon completion of the forms the Licensee will return the forms via email to SCPDC and accounts shall be created in the system with information provided on the forms. Users can change the provided password after their first login to the Software. SCPDC shall maintain the confidentiality of the user name and personal access password of every Licensee official, employee, agent and contractor who has duties relating to the processing of Licensee permits and shall not release any such information to the public. Additional personal user names and personal access passwords shall be provided upon a submission of a User Creation form to SCPDC providing the user name and confirmation that the user is an official, employee, agent, or contractor of Licensee is supplied to SCPDC, which will become an addendum to this schedule.

B.2.   The individuals holding the following positions are authorized by Licensee to submit requests to SCPDC for (1) the creation of new user names and passwords for Licensee officials, employees, agents, and contractors, and (2) for the deactivation of existing user names and passwords: System Administrator, Project Manager

SCPDC shall immediately comply with requests to create and deactivate user names and passwords. Licensee may change the names of the individuals authorized to submit requests by providing notice in accordance with Section 12 of this Agreement.

SCHEDULE C
INTERGOVERNMENTAL AGREEMENT
SCPDC SOFTWARE LICENSE AND SERVICE LEVEL AGREEMENT

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 but requires correction.

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 or affects daily processing of permits.

1.3   "SUPPORT CALL (TIER 3)" means a reported problem in the SCPDC Software or a material functional component which causes the system to be down and not serving as designed, or has a significant revenue or operational 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. CST
Houma, LA 70360	

Contact Information

Tel: 1 866 957 3764   E-mail: support@mygovernmentonline.org
Ryan Hutchinson,
Chief Technology Officer

2.   TERM AND TERMINATION.   SCPDC's provision of Maintenance and Support to Licensee will commence on the Effective Date and will continue until the Agreement is terminated.

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 Licensee Data. 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. SCPDC will convert Licensee's current permit data for use with SCPDC Software. SCPDC will perform customization of SCPDC Software as set forth in the Contract Documents. SCPDC will provide features in the SCPDC Software as set forth in the Contract Documents. SCPDC will provide 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 as set forth in the Contract Documents. Licensee shall not create add-ons or feature changes to that version or disclose the source code to any third party.

SCPDC agrees to comply with Licensee's remote access policies, procedures, and guidelines. SCPDC shall ensure that its employees comply with all of Licensee's remote access policies, procedures, and guidelines.

3.1 LEVELS OF MAINTENANCE AND SUPPORT. During normal business hours, Licensee shall request support via the Response Center and Contract Procedures. After normal business hours, Licensee shall request support as provided in Section 3 above. SCPDC shall initially acknowledge receipt of a request for support within 15 minutes of SCPDC's receipt and shall contact Licensee within one hour of receipt. When contacting SCPDC, Licensee shall classify the problem based on the definitions set forth in Section 1 above. SCPDC shall not re-classify the problem without Licensee's prior approval. Maintenance and Support is available at the following Response Times:

(i) Support Call (Tier 3): Issue resolved within the response time of three (3) hours or an agreed upon due date and time; SCPDC shall provide a patch or work-around the next day, and the problem shall be fixed or documented in next major product release

(ii) Support Call (Tier 2): Issue resolved within the response time of six (6) hours; SCPDC shall provide a patch or work-around within five days, and the problem shall be fixed or documented in next major product release;

(iii) Support Call (Tier 1): Issue resolved within one (1) business day;, and the 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) Major 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. SCPDC

shall provide such software support and maintenance as may be necessary to maintain the Software in good operating condition and to meet the warranties set forth in the Contract Documents.

3.2.1 Unless otherwise agreed to by the parties, in addition to Major and Minor Updates, SCPDC shall make available to the Licensee all patches, upgrades, enhancements, new releases, new versions, and modifications developed by SCPDC for the Software at no additional cost. SCPDC shall ensure that all such Updates, patches, upgrades, enhancements, new releases, new versions, and modifications do not require modifications or reconfigurations to existing web presentation, workflows, or table values set up by Licensee. SCPDC shall provide release notes detailing Major changes.

3.2.2 At least thirty (30) days prior to release of Major Updates, SCPDC shall provide (1) training for the use of the updated Software and (2) relevant, customized user manuals and guides detailing the use of the updated Software.

3.2.3 Licensee shall request maintenance and support via the Response Center and Contact Procedure. All other notices required under this Schedule C shall be made pursuant to Section 12 of the Agreement.

3.2.4 The requirements set forth in Sections 3.2.1 and 3.2.2 shall not apply to emergency fixes and patches.

3.3   ON-SITE ASSISTANCE. When agreed to by Licensee and SCPDC, SCPDC can provide Maintenance and Support at the Licensee Site. In such event Licensee will reimburse licensor for all reimbursable traveling expenses and costs for board, lodging and meals as set forth in Section 5.4 of the Agreement. Licensee's prior written approval of any on-site support or maintenance and estimated travel expenses is required.

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, and SCPDC shall not perform any such services except with Licensee's prior written approval. Causes which are not attributable to SCPDC include but are not limited to:

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

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

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

3.4.4 Software programs developed by Licensee or other parties.

3.5 GUARANTEED SERVICE LEVEL. The percentage of actual uptime availability ("Uptime Availability Service Level Percentage") for the online Services will meet or exceed 99% ("Guaranteed Service Level"). The percentage of actual Uptime Availability will be individually measured and calculated for each thirty (30) consecutive days the online Services are provided.

Service Level Formula. Uptime Availability Service Level Percentage is reflected by the following formula:

Uptime Availability Service Level Percentage % = Maximum Available Minutes over 30 consecutive days, minus (-) Scheduled and Unscheduled Downtime Minutes, divided (÷) by Maximum Available Minutes, times (x) 100

Failure by SCPDC to maintain the Guaranteed Service Level for two or more thirty consecutive day periods within any twelve (12) consecutive month period shall constitute a breach of this Agreement.

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

4.1 When necessary to identify or address errors or malfunctions with the Software, Licensee shall provide SCPDC with access to Licensee's personnel and Equipment during normal business hours. This access must include the ability to remotely access the Equipment on which the Software is operating and to obtain the level of access necessary to support the Software. Remote access shall only be granted pursuant to Licensee's remote access policies, procedures, and guidelines. Remote access shall be limited to the equipment on which the Software operates and SCPDC shall not be granted access to Licensee's other equipment or networks.

4.2 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.

5. MAINTENANCE FEE. For Licensee the maintenance fees are waived for the Initial Term and all renewals. The License Fees cover all costs for maintenance and support for the Initial and renewal terms of this Agreement.

6. ASSIGNMENT OF DUTIES. SCPDC may assign its duties of Maintenance and Support to a third party, provided that SCPDC will remain responsible for the actions of such third party.

Any such assignment is subject to Licensee's prior written consent, which consent shall not be unreasonably withheld or delayed.

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

8.   LICENSEE DATA. SCPDC agrees that all data created by Licensee in the Software system belongs to Licensee and shall be subject to the terms and conditions set forth in the Agreement regarding Licensee Data.

SCHEDULE D
INTERGOVERNMENTAL AGREEMENT

INSURANCE

Unless otherwise approved in writing by Licensee's risk manager, SCPDC shall, at its own expense, procure and maintain in full force and effect during the term of this Agreement, policies of insurance, of the types and in the minimum amounts as follows, with responsible insurance carriers duly admitted and qualified in California covering the operations of SCPDC, pursuant to this Agreement: commercial general liability [and auto liability if any of the Services will be performed on Licensee property] ($1,000,000 per occurrence [and/or accident], $2,000,000 aggregate); excess liability ($2,000,000 per occurrence, $2,000,000 aggregate); workers' compensation (statutory limits) and employers' liability ($500,000 per accident); cyber liability ($2,000,000 per occurrence) providing protection against claims and liabilities arising from: (i) errors and omissions in connection with maintaining security of Licensee Data; (ii) data breach including theft, destruction, and/or unauthorized use of Licensee Data; (iii) identity theft including bank charges assessed; and (iv) violation of privacy rights due to a breach of Licensee Data; and professional liability ($1,000,000 per occurrence, $1,000,000 aggregate). Any of the foregoing policy limits shall be subject to modification by the Licensee's risk manager upon thirty (30) days prior, written notice to SCPDC, and at any time prior to commencement of the Services.

The Licensee, its elected officials, officer, employees and agents ("City Parties") shall be named as additional insureds in the commercial general, auto liability if required, cyber, and excess liability policies which shall contain standard cross liability clauses, using forms of endorsements acceptable to Licensee's risk manager. SCPDC shall cause the liability it assumed under this Agreement to be specifically insured under the contractual liability section of the liability insurance policies. The liability policies shall be primary without right of contribution from any of the City Parties, and SCPDC waives all rights of subrogation with respect to the required policies. Such policies shall require that Licensee be given no less than thirty (30) calendar days prior written notice of any cancellation thereof or material change therein. Licensee shall have the right to request an adjustment of the limits of liability for commercial general, auto, cyber, and excess liability if and as SCPDC's exposure to Licensee increases. SCPDC shall provide Licensee with certificates of insurance and original endorsements, evidencing all of the above coverage, including all special requirements specifically noted above, and shall provide Licensee with certificates of insurance evidencing renewal or substitution of such insurance thirty (30) calendar days prior to the effective date of such renewal or substitution. Any "claims made" professional liability policy shall be endorsed to provide an extended reporting period of not less than three (3) years.

Accepted:

City of Agoura Hills

_____   Date: _____
By:

South Central Planning and Development Commission

Kevin P. Belanger   Date: ____8/11/2023____
By: Kevin Belanger, CEO