



AGENDA
ELGIN CITY COUNCIL
REGULAR MEETING
TUESDAY, FEBRUARY 18, 2020
CITY ANNEX COUNCIL CHAMBERS, 310 NORTH MAIN STREET
7:00 PM

I. CALL TO ORDER

II. ROLL CALL

III. INVOCATION

IV. PLEDGE OF ALLEGIANCE

V. PUBLIC COMMENT

Individuals may request to speak on items on the agenda, and items not on the agenda, by requesting to speak during the meeting and under "PUBLIC COMMENT" and will be required to fill out a "PUBLIC COMMENT FORM" and present it, along with any material, handouts or information for Council, to the City Secretary prior to commencement of the Council meeting. Speaker comments are limited to three (3) minutes.

No formal action can be taken by the City Council on items not posted on the agenda. Items requiring a Public Hearing will allow a member of the public an opportunity to speak during the Public Hearing and does not require submission of a "PUBLIC COMMENT FORM." Speakers must address their comments to the Mayor or Presiding Officer rather than to an individual Council Member or member of Staff. All speakers must limit their comments to the specific subject matter noted on the "PUBLIC COMMENT FORM" and refrain from personal attacks or derogatory comments directed at any Council Member, member of Staff, other individual or group.

VI. CITY MANAGERS REPORT

1. First Quarter Investment Report - December 31, 2019

Documents:

[EXEC SUMMARY1Q INVEST REPORT THRU DEC 31,2019.PDF](#)
[1 Q INVESTMENT REPORT 2-18-2020.PDF](#)

2. General Activity Report And/Or Project Update

Documents:

[EXSUMMARY - GENERAL ACTIVITY REPORT.PDF](#)

3. Departmental Monthly Reports - January

Documents:

[EXSUM MONTHLY REPORTS BY DEPARTMENT JAN 2020.PDF](#)
[MONTHLY REPORT JAN 2020.PDF](#)

VII. CONSENT AGENDA

All of the items on the consent agenda are considered to be self-explanatory by the Council and will be enacted with one motion, one second, and one vote. There will be no separate discussion of these items unless a council member removes an item from the Consent Agenda and places it on the New Business section for Discussion and action.

1. City Council Meeting Minutes - February 4, 2020.

Documents:

[EXSUMMARY SHEET MINUTES.PDF](#)
[CITY COUNCIL MINUTES 02-04-20.PDF](#)

VIII. NEW BUSINESS

1. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS TO APPROVE A LICENSING AND SERVICES AGREEMENT WITH THE SOUTH CENTRAL PLANNING AND DEVELOPMENT COMMISSION (SCPDC) TO PROVIDE, INSTALL AND MAINTAIN SOFTWARE APPLICATIONS THAT WILL FACILITATE THE PROCESSING OF DEVELOPMENT PERMITS, PLANNING AND ZONING AND CODE ENFORCEMENT ACTIVITIES OF THE DEVELOPMENT SERVICES DEPARTMENT; AND TO AUTHORIZE THE MAYOR TO EXECUTE SAID AGREEMENT.

Documents:

[EXSUM AUTHORIZING EXECUTION OF AGREE WITH SCPDC.PDF](#)
[06 RES NO AUTHORIZE AGREE. WITH SCPDC.PDF](#)

2. A Resolution To Approve An Agreement With South Central Planning & Development Commission (SCPDC), To Provide Software Modules For Planning And Zoning, Building, And Code Enforcement To The City Of Elgin, Texas For A Minimum Period Of Two (2) Years And To Authorize The Mayor To Execute Said Agreement.

Documents:

[COUNCIL COVERSHEET.PDF](#)
[RESOLUTION \(MPN CONTRACT\).PDF](#)
[CITY OF ELGIN ILA 08 14 2019.PDF](#)

- 3. A Resolution To Reappoint Councilor Jessica Bega To A Two (2) Year Term On The Clean Air Coalition (CAC) As A Committee Member Representing The City Of Elgin From January 1, 2020 To January 1, 2022.**

Documents:

[COUNCIL COVERSHEET \(CAC MEMBERSHIP\).PDF](#)
[RESOLUTION \(CAC MEMBERSHIP\).PDF](#)
[RE-APPROVAL EMAIL FROM COUNCILOR BEGA.PDF](#)

- 4. An Ordinance Approving A New Municipal Maintenance Agreement (MMA) Between The State Of Texas And The City Of Elgin For The Maintenance, Control, Supervision, And Regulation Of Certain State Highways And/Or Portions Of State Highways In The City; And Providing The Execution Of Said Agreement And Declaring An Emergency.**

Documents:

[COUNCIL COVERSHEET.PDF](#)
[CODE CHANGE ORDINANCE \(MMA\).PDF](#)
[NEW ELGIN MMA.PDF](#)

IX. EXECUTIVE SESSION

The City Council may announce that it will adjourn the public meeting at any time during the meeting and convene in Executive Session pursuant to Chapter 551 of the Texas Government Code to discuss any matter as specifically listed on the agenda and/or as permitted by Chapter 551 of the Texas Government Code.

X. RECONVENE

The City Council will return to open session for possible discussion and action as a result of the Executive Session

XI. ANNOUNCEMENTS

XII. ADJOURMENT

Notice of Assistance at Public Meetings, the City of Elgin is committed to compliance with the Americans with Disabilities Act. Elgin City Hall and Council Chambers are wheelchair accessible and special marked parking is available. Persons with Disabilities who plan to attend this meeting and who may need assistance are requested to contact the City Secretary's Office at (512)229-3222. Please provide forty-eight hours notice when feasible.

I, Amelia Sanchez, City Secretary for the City of Elgin, hereby certify this notice was posted at the City Hall Annex of the City of Elgin, Texas on or before Friday, February 14, 2020, in accordance with Chapter 551 of the Texas Government Code.

Amelia Sanchez, City Secretary



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: Quarterly Financial Report – First Quarter 19-20

DEPARTMENT: Finance

PROPOSED ACTION: Review and Accept

BACKGROUND: Section 2256.005 of the Texas Government Code requires that not less than quarterly, the Investment Officer shall prepare and submit to the City Council, a written, signed, investment report demonstrating a list of investment transactions for the preceding reporting period, in accordance with the Act. Reports will include the following:

- 1.) For each pooled fund group: a beginning book value and market value, book and market value additions and changes, and ending book and market value.
- 2.) The book value and market value of each investment at the beginning and end of the period by type of asset and fund type invested.
- 3.) The maturity date of each investment.

Detailed and summary reports will be prepared and presented to the City Council and Mayor not less than quarterly. The attached Report complies with this requirement of the ACT and the City's Investment Policy.

BUDGET/FINANCIAL IMPACT:

Funding for this item was { } included { } not included in the current-year budget {X} N/A

RECOMMENDATION: Review and accept the report as presented.

ATTACHMENTS: Quarterly Financial Report – Fourth Quarter 2018-19

{ } Staff will be making a detailed presentation on this agenda item at the meeting.

{ } Staff will provide brief comments and answer questions on this item at the meeting.

{X} This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

1st Quarter Investment Report- Fiscal Year 2020

OPERATING ACCOUNTS -

Financial Institution	Fund	Account Name	Ending 9/30/2019	Deposits / (Withdrawals)	Interest	Ending 12/31/2019
First National Bank						
	99	Main Checking	1,790,790.11	1,937,374.51	9,369.47	3,737,534.09
	001	Police Seizure Chapter 59	77.59	-	0.39	77.98
	072	General - ATS Clearing	444,122.45	(235,341.43)	2,067.76	210,848.78
	002	USDA Rural Dev	1.01	-	-	1.01
	001	Money Market General Operations	178.85	-	0.91	179.76
Sub-total			5,622,044.62	1,702,033.08	11,438.53	3,948,641.62
TOTAL - DEPOSITS			5,948,320.32	1,702,033.08	11,438.53	3,948,641.62

CAPITAL IMPROVEMENT FUNDS

Financial Institution	Fund	Account Name	Ending 9/30/2019	Deposits / (Withdrawals)	Interest	Ending 12/31/2019	WAM*
Logic							
		CO Series 2015- Proceeds	774,249.47	(776,427.00)	2,179.20	1.67	2.00
		CO Series 2016 - Proceeds	4,206,553.04	(562,677.61)	19,397.11	3,663,272.54	2.00
		CO Series 2019A - Proceeds	3,822,248.53	(1,796,744.08)	13,957.40	2,039,461.85	
		CO Series 2019B(TIRZ) Proceeds	440,815.21	(441,677.99)	1,009.43	146.65	
Sub-total			9,243,866.25	(3,577,526.68)	36,543.14	5,702,882.71	2.00
TOTAL - INVESTMENTS			9,243,866.25	(3,577,526.68)	36,543.14	5,702,882.71	
TOTAL - DEPOSITS AND INVESTMENTS			15,192,186.57	(1,875,493.60)	47,981.67	9,651,524.33	

* Weighted Average to Maturity (WAM)

Signature

Charles L. Cunningham
Director of Finance



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: General Activity Report and/or Project Update

DEPARTMENT: City Manager/Staff

PROPOSED ACTION:

No Council action proposed or requested; This item is to allow for general update and/or activities report relating to various on-going city projects or issues.

BACKGROUND:

This item is to provide opportunities for miscellaneous updates and comments by the staff; and general Q&A with the City Council relative to on-going projects and/or issues.

BUDGET/FINANCIAL IMPACT:

Funding for this item was { } included { } not included in the current-year budget {X}
N/A

RECOMMENDATION:

N/A

ATTACHMENTS:

None.

{ } Staff will be making a detailed presentation on this agenda item at the meeting.

{X} Staff will provide brief comments and answer questions on this item at the meeting.

{ } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: Departmental Monthly Report – Period ending January 31, 2020

DEPARTMENT: Administration

PROPOSED ACTION: No action required on this item.

BACKGROUND: Monthly Reports by Department

The attachments for this item include data for the month ending January 31, 2020. Please note that information provided for Utility Billing activities has been revised to provide more pertinent information as it relates to the growth in the number of customers for water, wastewater and trash collection services. On the revised report, the prior year's total customer count is blacked out and the current months data shows the number of customer's that have been added from the previous month's total. The amounts shown in the Year-to-date columns are the total current customers and the total number of new customers that have been added since the beginning of the fiscal year.

The percentage increase shown in the final column is the percent increase in the number of customers year-to-date for the current fiscal year.

BUDGET/FINANCIAL IMPACT:

None

RECOMMENDATION: These reports are informational only and no action is required.

ATTACHMENTS: Summary Report of Operations – For the month of January 2020 .

- { }** Staff will be making a detailed presentation on this agenda item at the meeting.
- { }** This is a routine procedural item and no presentation is planned for this meeting.
- {X}** Staff will provide brief comments and answer questions on this item at the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.



Monthly Report of Operations

As of Jan 31, 2020

Administration	Jan '19	Jan '20	%	YTD 1-31-19	YTD 1-31-20	%
Human Resources						
Total FTE - Filled Positions	96.0	99.4	↑ 4%			
Vacancies - all funds	N/A	5	→ 0%			
New Hires	7	1	↓ -86%	21	9	↓ -57%
Separations	2	1	↓ -50%	8	7	↓ -13%
Municipal Court						
Total Active Cases Pending (beg. of Month)	15,749	16,237	↑ 3%			
New Cases Filed (incl reactivation of inactive)	332	330	↓ -1%	1,136	1,398	↑ 23%
# of Magistrations	22	28	↑ 27%	123	132	↑ 7%
Total Cases Disposed of	196	637	↑ 225%	701	1,496	↑ 113%
Cases placed on Inactive Status	72	95	↑ 32%	178	425	↑ 139%
Total Active Cases Pending (end of Month)	15,825	15,969	↑ 1%	62,967	64,726	↑ 3%
Fines Collected	\$ 41,023	\$ 43,511	↑ 6%	\$ 127,241	\$ 207,521	↑ 63%
Retained by City	\$ 25,223	\$ 34,323	↑ 36%	\$ 73,774	\$ 146,443	↑ 99%
Development Services						
Construction Permits (all types)	46	51	↑ 11%	119	172	↑ 45%
Revenue from Bldg. Permits	\$ 13,389	\$ 11,015	↓ -18%	\$ 29,975	\$ 43,545	↑ 45%
Inspections (all types)	143	216	↑ 392%	748	865	↑ 16%
Revenue from Inspections	\$ 4,320	\$ 21,238	→ 0%	\$ 17,220	\$ 88,388	↑ 413%
Housing Plats approved (number of lots)	2	252	→ 0%	2	254	→ 0%
Community Services						
Library-						
Materials circulated	6,117	6,195	↑ 1%	19,336	18,991	↓ -2%
# Visitors (incl. Progs)	3,648	3,816	↑ 5%	11,357	11,509	↑ 1%
Public Computer Use hrs.	361	362	↑ 0%	1,046	1,084	↑ 4%
Public Computer Use Persons	595	566	↓ -5%	1,634	1,721	↑ 5%
Civic Center - Rentals (all)	46	36	↓ -22%	118	99	↓ -16%
Recreation Program -						
Annual Memberships	20	11	↓ -45%	36	40	↑ 11%
Monthly Rec Memberships	199	200	↑ 1%	554	633	↑ 14%
Facility Rental Fleming Center	15	10	↓ -33%	49	236	↑ 382%
Facility Rental Recreation Center	9	4	↓ -56%	32	119	↑ 272%
Sponsored Events	\$ 85	\$ 404	↑ 375%	\$ 3,680	\$ 6,734	↑ 83%
Public Works						
Streets:						
Lane miles Inventoried	56.9	57.8	↑ 2%	228	231	↑ 2%
Pot holes patched - Square Yards	44	44	→ 0%	44	240	↑ 443%
Wide Area patching/renovation - SY	144	22	↓ -85%	213	180	↓ -15%
Lane Miles Overlayed'	-	-	→ 0%	-	-	→ 0%
Drainage:						
Linear feet of drains cleaned	27,750	55,312	↑ 99%	66,982	75,490	↑ 13%
# Culverts Cleared	2	-	→ 0%	6	-	↓ -100%
Parks:						
Acres Mowed/maintained	-	260	→ 0%	N/A	728	→ 0%
Reserved Park Facilities	-	-	→ 0%	N/A	44	→ 0%
# Organized Sports Events	-	-	→ 0%	N/A	93	→ 0%



Monthly Report of Operations

As of Jan 31, 2020

Utilities	Jan '19	Jan '20	%	YTD 1-31-19	YTD 1-31-20	%
Water System:						
# Customers Total/Added by month *		3	→ 0%	3,378	15	↓ -100%
Amount Billed	\$222,044	\$230,005	↑ 4%	\$ 897,753	\$ 966,626	↑ 8%
Meters Replaced	-	-	→ 0%	30	167	↑ 457%
# Leaks Repaired	15	-	→ 0%	70	8	↓ -89%
Vol. water produced (x1,000 gallons)	31,418	31,280	↓ 0%	144,207	126,591	↓ -12%
Main Line Breaks	4	-	→ 0%	14	3	↓ -79%
Service Line Breaks	4	1	↓ -75%	14	15	↑ 7%
Wastewater System:						
# Customers Total/Added by month *		3	→ 0%	3,071	13	↓ -100%
Amount Billed	\$ 159,314	\$ 158,390	↓ -1%	\$ 639,259	\$ 634,377	↓ -1%
Main Lines repaired	1	3	↑ 200%	8	5	↓ -38%
Lines replaced (Linear Feet.)	15	60	↑ 300%	40	72	↑ 80%
Manholes Cleaned	-	4	→ 0%	-	8	→ 0%
Average Daily Flow (MGD)	0.8098	0.5598	↓ -31%	3	2	↓ -30%
Total Monthly Flow (MGD)	25.1024	17.3524	↓ -31%	94	66	↓ -30%
Trash Collection:						
# Customers Total/Added by month *		12	→ 0%	3,193	32	↓ -99%
Amount Billed	\$ 93,009	\$ 103,276	↑ 11%	\$ 479,945	\$ 475,987	↓ -1%

* # Customers Total /Added by month - the purpose here is to track the increase or decrease of customers over the course of the year. **Current month** shows the number of customers added in the month. The amount in the first YTD column shows the current number of customers. The final column shows year to date additions.

Police Department	Jan '19	Jan '20	%	YTD 1-31-19	YTD 1-31-20	%
Part I Index Offenses						
Murder (# Victims)	-	-	→ 0%	-	-	→ 0%
Rape(# Victims)	1	-	→ 0%	4	3	↓ -25%
Robbery (# Victims)	2	1	↓ -50%	3	3	→ 0%
Aggravated Assault (# Victims)	-	1	→ 0%	1	5	↑ 400%
Total Violent Index Crimes*	3	2	↓ -33%	8	11	↑ 38%
Burglary (# premises entered)	4	3	↓ -25%	11	8	↓ -27%
Theft (# offenses)	12	4	↓ -67%	49	35	↓ -29%
Auto Theft (#vehicles)	1	1	→ 0%	3	2	↓ -33%
Arson (# premises)	-	-	→ 0%	-	-	→ 0%
Total Property Index Crimes*	17	8	↓ -53%	63	45	↓ -29%
Total Part I Index Crimes*	20	10	↓ -50%	71	56	↓ -21%
Part II Index Offenses						
Other Assaults	4	8	↑ 100%	24	31	↑ 29%
Weapons	-	-	→ 0%	1	-	↓ -100%
Narcotics	2	2	→ 0%	9	14	↑ 56%
DUI	1	4	↑ 300%	13	16	↑ 23%
All Other Part II Offenses	42	49	↑ 17%	177	185	↑ 5%
Total Part II Index Crimes*	49	63	↑ 29%	224	246	↑ 10%
Total All Index Crimes*	69	73	↑ 6%	295	302	↑ 2%



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: City Council Regular Meeting Minutes –February 4, 2020.

DEPARTMENT: Administration

PROPOSED ACTION:

Review and approve the February 4, 2020 Meeting Minutes.

BACKGROUND:

N/A

BUDGET/FINANCIAL IMPACT:

Funding for this item was { } included { } not included in the current-year budget {X} N/A

RECOMMENDATION:

Approval of the February 4, 2020 Meeting Minutes.

ATTACHMENTS: February 4, 2020 Meeting Minutes.

{ } Staff will be making a detailed presentation on this agenda item at the meeting.

{X} Staff will provide brief comments and answer questions on this item at the meeting.

{ } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

**ELGIN CITY COUNCIL
REGULAR MEETING
CITY ANNEX COUNCIL CHAMBERS, 310 N MAINSTREET
TUESDAY, FEBRUARY 4, 2020**

CALL TO ORDER

Mayor Cannon called the meeting to order at 7:00 p.m.

ROLL CALL

Present: Chris Cannon, Mayor
Jessica Bega, Mayor Pro Tem
Mary Penson, Council Member
Brad Jones, Council Member
Forest Dennis, Council Member
Sue Brashar, Council Member
Susie Arreaga, Council Member
Juan Gonzalez, Council Member

Mayor Cannon certified there was a quorum and that Council Members Lopez was absent. He stated Council Member Lopez notified him that he would not be attending tonight.

Council Member Penson moved to excuse Council Members Lopez. Council Member Arreaga seconds the motion. Motion carried 8-0.

Staff: Thomas L. Mattis, City Manager
Charles Cunningham, Finance Director
Amy Miller, Community
Michael Gonzalez, Asst Public Works Director
David Harrell, Planning Director

INVOCATION

Council Member Penson gave the invocation.

PLEDGE OF ALLEGIANCE

Mayor Cannon led the Pledge of Allegiance to the United States and Texas Flag.

Mayor Cannon recessed the Regular Meeting at 7:02 and opened the Public Hearing.

PUBLIC HEARING

CITY COUNCIL REGULAR MEETING

February 4, 2020 – Page 2

City Annex Council Chambers

1. Public Hearing on an Ordinance Amending Chapter 46, Article IV, Division 4 Code of Ordinances, City of Elgin, Texas, which Modifies Terminology & Removes a Manufactured Home Park and Industrialized Housing as a Use by Right in the R-3 Single Family, Two-Family, & Industrialized District. Also Amending Chapter 46, Article II, Division 5, Code of Ordinances, City of Elgin, Texas, which Modifies Terminology and Removes by Specific Use a HUD Code Manufactured Home Park in the R-1 Single Family District & R-2 Single Family (Two-Family) and Garage Apartment District, and Providing a Savings Clause and Repealing Conflicting Ordinances and Resolutions.

There were no speakers for this item.

2. Public Hearing on an Ordinance Amending the Official Zoning Map of the City Of Elgin, Texas, Adopted in Chapter 46, Section 46-3, Revised Code of Ordinances, City of Elgin, Texas, 2013 and Making this Amendment a Part of said Official Zoning Map, To Wit: to Rezone As R-3 Single Family, Two Family, and Industrialized Housing District, the Property being Approximately 68.992 Acres of Land and being Described in Exhibit “A”, Attached Hereto And Providing a Savings Clause and Repealing Conflicting Ordinances and Resolutions.

There were no speakers for this item.

3. Public Hearing On an Ordinance Amending Chapter 6, Article III, Unsafe Building Abatement, City Of Elgin, Texas, By Amending Section 6-57, Sections 6-59 Through 6-61, Section 6-63, Section 6-65, Section 6-66, Section 6-68 Through 6-70 And Repealing All Other Ordinances And Parts Of Ordinances In Conflict Therewith; An Providing A Savings Clause.

There were no speakers for this item.

4. Public Hearing on an Ordinance Amending Chapter 46, Article V, Division 4, Section 46-635 Code of Ordinances, City of Elgin, Texas, which Amends the Offsite Minimum Parking and Loading Requirements in the Downtown Historic District to No Minimum and Sets Maximum Parking Standards to Six (6) Parking Spaces, and Providing a Savings Clause and Repealing Conflicting Ordinances and Resolutions.

There were no speakers for this item.

5. Public Hearing on an Ordinance Amending Chapter 32, Article I, Section 32-3; Amending Chapter 32, Article III, Sections 32-103, 321-96, And 32-226; Amending Chapter 46, Article I, Section 46-1; Amending Chapter 46, Article II, Division 5, Section 46-138(A); Amending Chapter 46, Article V, Division 8, Sections 46-718 – 46-747; Adding Chapter 46, Article III, Section 46-183 – 46-184; Adding Chapter 46, Article V, Division 9 Wireless Communication Facilities (WCF); And Providing for a Savings Clause and Repealing Conflicting Ordinances or Resolutions.

There were no speakers for this item.

Mayor Cannon closed the Public Hearing at 7:08 p.m. and re-convened the Regular Meeting.

PUBLIC COMMENT

Mayor Cannon opened Public Comments.

With no one wishing to speak Mayor Cannon closed Public Comments.

CITY MANAGER'S REPORT

1. General Activity Report and/or Project Update.

City Manager Thomas Mattis spoke about the activity report that he sent to Council Members regarding the growth in residential developments beginning construction on County Line Road. He stated the County Line Road improvement was in the 5-Year Capital Plan, and it was time to start developing construction plans for the improvement project and authorizing the Engineer to begin those construction plans. He stated those plans would include the need to acquire additional right-of-way and it would take the better part of the year to get those plans and go out for bids.

CONSENT AGENDA

1. City Council Meeting Minutes - January 7, 2020 And January 21, 2020.

Council Member Brashar moved to approve the minutes with corrections to spelling of names. Council Member Penson seconds the motion. Motion carried 8-0.

NEW BUSINESS

1. AN ORDINANCE AMENDING CHAPTER 46, ARTICLE IV, DIVISION 4 CODE OF ORDINANCES, CITY OF ELGIN, TEXAS, WHICH MODIFIES TERMINOLOGY & REMOVES A MANUFACTURED HOME PARK AND INDUSTRIALIZED HOUSING AS A USE BY RIGHT IN THE R-3 SINGLE FAMILY, TWO-FAMILY, & INDUSTRIALIZED DISTRICT. ALSO AMENDING CHAPTER 46, ARTICLE II, DIVISION 5, CODE OF ORDINANCES, CITY OF ELGIN, TEXAS, WHICH MODIFIES TERMINOLOGY AND REMOVES BY SPECIFIC USE A HUD CODE MANUFACTURED HOME PARK IN THE R-1 SINGLE FAMILY DISTRICT & R-2 SINGLE FAMILY (TWO-FAMILY) AND GARAGE APARTMENT DISTRICT, AND PROVIDING A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS.

City Manager Thomas Mattis spoke and stated that items 1 and 2 are related and staff is making a tweak in the code, which in this case are related to the Stone Creek Ranch and they requested R-3 zoning and staff realized under R-3 zoning Mobile Home parks were permitted.

CITY COUNCIL REGULAR MEETING

February 4, 2020 – Page 4

City Annex Council Chambers

Mr. Mattis stated that the Ordinance that is in the packet lists eliminating Industrialized Housing from R-3 zoning, but that today the City Attorney advised that Industrialized Housing must remain in the code under R-3 under state law.

David Harrell Planning Director stated that since the Ordinance included removing Industrial housing in it, he asked that they approve it on the condition that Industrialized Housing remain as a permitted use.

Council Member Penson moved to approve the Ordinance with Industrialized Housing as a permitted use within the R-3 category. Council Member Brashar seconds the motion. Motion carried 8-0.

2. AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF ELGIN, TEXAS, ADOPTED IN CHAPTER 46, SECTION 46-3, REVISED CODE OF ORDINANCES, CITY OF ELGIN, TEXAS, 2013 AND MAKING THIS AMENDMENT A PART OF SAID OFFICIAL ZONING MAP, TO WIT: TO REZONE AS R-3 SINGLE FAMILY, TWO FAMILY, AND INDUSTRIALIZED HOUSING DISTRICT, THE PROPERTY BEING APPROXIMATELY 68.992 ACRES OF LAND AND BEING DESCRIBED IN EXHIBIT “A”, ATTACHED HERETO AND PROVIDING A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS.

Council Member Penson moved to approve the Ordinance as presented. Council Member Dennis seconds the motion. Motion carried 8-0.

3. AN ORDINANCE AMENDING CHAPTER 6, ARTICLE III, UNSAFE BUILDING ABATEMENT, CITY OF ELGIN, TEXAS, BY AMENDING SECTION 6-57, SECTIONS 6-59 THROUGH 6-61, SECTION 6-63, SECTION 6-65, SECTION 6-66, SECTION 6-68 THROUGH 6-70 AND REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH; AN PROVIDING A SAVINGS CLAUSE.

Council Member Brashar moved to approve the Ordinance as presented. Council Member Penson seconds the motion. Motion carried 8-0.

4. AN ORDINANCE AMENDING CHAPTER 46, ARTICLE V, DIVISION 4, SECTION 46-635 CODE OF ORDINANCES, CITY OF ELGIN, TEXAS, WHICH AMENDS THE OFFSITE MINIMUM PARKING AND LOADING REQUIREMENTS IN THE DOWNTOWN HISTORIC DISTRICT TO NO MINIMUM AND SETS MAXIMUM PARKING STANDARDS TO SIX (6) PARKING SPACES, AND PROVIDING A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS.

Council Member Dennis moved to approve the Ordinance as presented. Council Member Penson seconds the motion. Motion carried 8-0.

CITY COUNCIL REGULAR MEETING

February 4, 2020 – Page 5

City Annex Council Chambers

5. AN ORDINANCE AMENDING CHAPTER 32, ARTICLE I, SECTION 32-3; AMENDING CHAPTER 32, ARTICLE III, SECTIONS 32-103, 321-96, AND 32-226; AMENDING CHAPTER 46, ARTICLE I, SECTION 46-1; AMENDING CHAPTER 46, ARTICLE II, DIVISION 5, SECTION 46-138(A); AMENDING CHAPTER 46, ARTICLE V, DIVISION 8, SECTIONS 46-718 – 46-747; ADDING CHAPTER 46, ARTICLE III, SECTION 46-183 – 46-184; ADDING CHAPTER 46, ARTICLE V, DIVISION 9 WIRELESS COMMUNICATION FACILITIES (WCF); AND PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES OR RESOLUTIONS.

Council Member Brashar moved to approve the Ordinance as presented. Council Member Penson seconds the motion. Motion carried 8-0.

6. A RESOLUTION ADDING AN ADDENDUM BETWEEN THE CITY OF ELGIN AND ARCH TECHNICAL SERVICES LLC, DBA ATS ENGINEERS, INSPECTORS, & SURVEYORS FOR ADDING FIRE CODE REVIEW AND FIRE INSPECTIONS.

Mayor Pro Tem Bega moved to approve the Resolution as presented. Council Member Penson seconds the motion. Motion carried 8-0.

7. A RESOLUTION OF THE CITY OF ELGIN, SUPPORTING AN APPLICATION TO THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS FOR 2020 HOUSING TAX CREDITS FOR THE PROPOSED COTTAGES OF CEDAR RIDGE PROJECT; AND PROVIDING FOR RELATED MATTERS.

Council Member Penson moved to approve the Resolution as presented. Council Member Arreaga seconds the motion. Motion carried 8-0.

ANNOUNCEMENTS

Amy Miller mentioned Valentines Weekend in downtown Elgin, Sip, Shop and Stroll, as well as music.

Mr. Mattis mentioned the reception on Thursday for a special recognition for 3 employees for their career in the city.

ADJOURNMENT

Mayor Cannon adjourned the City Council Meeting at 7:56 p.m.

CITY COUNCIL REGULAR MEETING
February 4, 2020 – Page 6
City Annex Council Chambers

Chris Cannon, Mayor

ATTEST:

Amelia Sanchez, City Secretary



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS TO APPROVE A LICENSING AND SERVICES AGREEMENT WITH THE SOUTH CENTRAL PLANNING AND DEVELOPMENT COMMISSION (SCPDC) TO PROVIDE, INSTALL AND MAINTAIN SOFTWARE APPLICATIONS THAT WILL FACILITATE THE PROCESSING OF DEVELOPMENT PERMITS, PLANNING AND ZONING AND CODE ENFORCEMENT ACTIVITIES OF THE DEVELOPMENT SERVICES DEPARTMENT; AND TO AUTHORIZE THE MAYOR TO EXECUTE SAID AGREEMENT.

DEPARTMENT: Finance

PROPOSED ACTION: Authorize Mayor to Execute the Agreement as presented or with any modifications the Council may wish to suggest.

BACKGROUND:

One of the purposes of the sale of the 2019A bonds was to provide funding for upgrading the City's management software for certain applications that were deemed to be currently inadequate. In September of 2018 the City acquired similar software to that being proposed here, to automate certain development activities such as permitting, planning and zoning activities etc. After the hiring of a new Director of Development Services in 2019, it was determined that the current software, while adequate, is not the most commonly used by most Community Development Departments and lacks the functionality of the new recommended software. In fact, the proposed software was developed in conjunction and cooperation with the Capital Area Council of Governments (CAPCOG), who facilitates the acquisition of the software in this area. The initial costs for acquisition of the SCPDC software will be paid from the 2019A Bond proceeds. Annual licensing and use fees thereafter are approximately the same as that for I WORKS so this would not represent an increase in costs going forward.

BUDGET/FINANCIAL IMPACT:

Funding for the installation and first year maintenance costs the software proposed to be purchased from SCPDC, would come from proceeds of the 2019A Certificates of Obligations.

RECOMMENDATION: Recommended for acceptance

ATTACHMENTS: 1.) Copy of Resolution authorizing the Agreement between City and SCPDC
2.) Copy of Agreement with SCPDC containing the scope of work, services to be provided, cost of services and other terms and conditions to be agreed to between the parties.

{X} Staff will provide brief comments and answer questions on this item at the meeting.
Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

RESOLUTION NO: _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS TO APPROVE A LICENSING AND SERVICES AGREEMENT WITH THE SOUTH CENTRAL PLANNING AND DEVELOPMENT COMMISSION (SCPDC) TO PROVIDE, INSTALL AND MAINTAIN SOFTWARE APPLICATIONS THAT WILL FACILITATE THE PROCESSING OF DEVELOPMENT PERMITS, PLANNING AND ZONING AND CODE ENFORCEMENT ACTIVITIES OF THE DEVELOPMENT SERVICES DEPARTMENT; AND TO AUTHORIZE THE MAYOR TO EXECUTE SAID AGREEMENT.

WHEREAS, the Council recently authorized the sale of bonds, in part for the acquisition of software that would upgrade and improve the City's general management capabilities; and

WHEREAS, staff has investigated and evaluated various options that would provide more commonly used software solutions that facilitate the permitting, planning and zoning, and code enforcement activities performed by City staff; and

WHEREAS, the SCPDC has demonstrated that its software offers the best solution for managing said systems, compared to others that were considered for this task; and

WHEREAS, the Capital Area Council of Governments (CAPCOG) has entered into an interlocal agreement with SCPDC to make this software available to its member agencies; and

WHEREAS, the terms and conditions of the proposed scope of work are documented in the draft License and Services Agreement, attached hereto as ATTACHMENT A;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS THAT:

The City Council approves entering into a License and Services Agreement with SCPDC as shown in Attachment A and that the Mayor is authorized on behalf of the City to execute said Agreement which is incorporated herein for all purposes and that SCPDC shall provide said services as described therein.

APPROVED AND RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS ON
THIS 18th DAY OF FEBRUARY, 2020.

Chris Cannon, Mayor

ATTEST:

Amelia Sanchez, City Secretary

ATTACHMENT A
INTERLOCAL CONTRACT
FOR LICENSING SCPDC SOFTWARE

Sec. 1. Parties and Purpose

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

1.2. The City of Elgin, Texas ("Licensee") is a Texas home-rule city.

1.3. The South Central Planning and Development Commission (Licensor) ("SCPDC") is a regional planning commission and Political Subdivision of the State of Louisiana, domiciled in Terrebonne Parish. The district was established in 1973 and created by law in 1978 under state act 472. The statute allows its member governmental entities to come together through SCPDC to provide long range planning, act as a state and federal liaison, provide guidance and study to current issues affecting government, and provide services to business and citizens.

1.4. SCPDC has created MyPermitNow, MyProjectNow, MyAddressNow, Inspection Anywhere and MyGovernmentOnline software (the "SCPDC Software") and this contract is entered into among Licensee, and SCPDC under chapter 791 of the Government Code to license Contractor to use the SCPDC Software under certain terms and conditions. CAPCOG has been granted a limited power of attorney by SCPDC to execute this contract on SCPDC's behalf.

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

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

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

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

2.5 "MAJOR AND MINOR UPDATES" shall mean updates, if any, to the SCPDC Software. Major Updates involve additions of substantial functionality while Minor Updates do not. Major Updates are designated by a change in the number to the left of the decimal point of the number appearing after the product name while Minor Updates are designated by a change in such number to the right of the decimal point. Example, 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 specified in Schedule A and otherwise provided for Licensee use pursuant to this Agreement.

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

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

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

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-bearing user license during the term of this Agreement 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 My Permit Now, 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 the SCPDC's Software, and reserve all rights therein not expressly granted under this Agreement. This license transfers to Licensee neither title nor any proprietary or intellectual property rights to the Software, Documentation, or any copyrights, patents, or trademarks, embodied or used in connection therewith, except for the rights expressly granted herein.

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

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

(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. Licensee hereby shall indemnify and hold harmless SCPDC from and against all losses, costs, liabilities and expenses arising out of or relating to any breach by Licensee of this agreement, use of the software, or as a result of the carelessness, negligence or improper conduct of Licensee, its agents, employees or representatives.

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

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

4. 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.

5. LICENSE FEE

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

5.2 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 Agreement (other than taxes on the net income of SCPDC).

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

6. 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 Agreement and in such event SCPDC shall have the right to terminate the rights granted hereunder with respect to such site for the term of this Agreement.

7. LIMITED WARRANTY AND LIMITATION OF LIABILITY

7.1 LIMITED WARRANTY. SCPDC warrants for the term of the contract from the Effective Date (the "Warranty Period") the Software will perform in substantial accordance with the Documentation under normal use. If during the Warranty Period the Software does not perform as warranted (a "Non-Conformance"), SCPDC shall undertake to correct such Non-Conformance, or if correction is reasonably not possible, replace such Software free of charge. If neither of the foregoing is commercially practicable, SCPDC shall terminate this Agreement and refund to Licensee the License Fee. THE FOREGOING ARE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY. The warranty set forth above is made to and for the benefit of Licensee only. The warranty will apply only if:

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

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

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

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

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

7.2 DISCLAIMER. EXCEPT AS SET FORTH ABOVE, SCPDC MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO THE SOFTWARE OR THE DOCUMENTATION, OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO LICENSEE UNDER THIS AGREEMENT, INCLUDING MAINTENANCE AND SUPPORT. SCPDC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND 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.

7.3 LIMITATION OF LIABILITY. IN NO EVENT WILL SCPDC BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SOFTWARE OR SERVICES PERFORMED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF SCPDC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, SCPDC WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN DELIVERY OR FURNISHING THE SOFTWARE OR SAID SERVICES. SCPDC'S LIABILITY UNDER THIS AGREEMENT FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, RESTITUTION, WILL NOT, IN ANY EVENT, EXCEED THE LICENSE FEE PAID BY LICENSEE TO SCPDC UNDER THIS AGREEMENT.

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

7.5 CLAIMS. No action arising out of any breach or claimed breach of this Agreement or transactions contemplated by this Agreement may be brought by either party more than one (1) year after the cause of action has accrued. For purposes of this Agreement, 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.

7.6 LIMITATION. The foregoing obligations shall not apply to the extent the infringement arises as a result of modifications to the Software made by any party other than SCPDC or SCPDC's authorized representative.

7.7 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.

7.8 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 agreement, use of the software, or as a result of the carelessness, negligence or improper conduct of Licensee, its agents, employees or representatives.

8. CONFIDENTIALITY

8.1 CONFIDENTIAL INFORMATION. Each party acknowledges that the Confidential Information constitutes valuable trade secrets and each party agrees that it shall use Confidential Information solely in accordance with the provisions of this Agreement and will not disclose, or permit to be disclosed, the same, directly or indirectly, to any third party without the other party's prior written consent. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. Furthermore, it is understood that the terms of this Agreement 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 Statute 44:1 et seq., (ii) already in the other party's possession and not subject to a confidentiality obligation, (iii) obtained by the other party from third parties without restrictions on disclosure, (iv) independently developed by the other party without reference to Confidential Information, or (v) required to be disclosed by order of a court or other governmental entity. Nothing herein will prevent routine discussions by the parties that normally take place in a "user group" context.

8.2 INJUNCTIVE RELIEF. In the event of actual or threatened breach of the provisions of Section 9.1, the non-breaching party will have no adequate remedy at law and will be entitled to immediate and injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

9. TERM AND TERMINATION

9.1 TERM. This Agreement will take effect on the Effective Date and will remain in force for a period of two (2) years thereafter. The contract will automatically renew for 12-months periods following the end of the initial term unless terminated in accordance with this Agreement.

9.2 TERMINATION. This Agreement is terminated by:

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

(b) By SCPDC. Upon written notice to Licensee if any of the following events ("Termination Events") occur, provided that no such termination will entitle Licensee to a refund of any portion of the License Fee or maintenance fees: (i) Licensee fails to pay any undisputed amount due to SCPDC within thirty (30) days after SCPDC gives the Licensee written notice of such non-payment; (ii) Licensee is in material breach of any non-monetary term, condition or provision of Agreement,

which breach, if capable of being cured, is not cured within thirty (30) days after SCPDC gives Licensee written notice of such breach; or (iii) Licensee becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes; or (iv) SCPDC elects to refund Licensee's fees.

9.3 EFFECT OF TERMINATION. If any Termination Event occurs, termination will become effective immediately or on the date set forth in the written notice of termination. Termination of this Agreement will not affect the provisions regarding Licensee's or SCPDC's treatment of Confidential Information, provisions relating to the payment of amounts due, or provisions limiting or disclaiming SCPDC's liability, which provisions will survive termination of this Agreement. Within fourteen (14) 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.

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

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

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

To: South Central Planning and
District Commission

To: City of Elgin, Texas

Address: 5058 West Main St.

Address: 310 N. Main Street

12. MISCELLANEOUS

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

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

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

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

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

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

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

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

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

12.10 DISPUTE RESOLUTION. The parties have entered into this Agreement voluntarily and in good faith. As a result, if any dispute, claim or controversy ("dispute") arises between them, unless otherwise provided in this Agreement, they agree that they will first attempt to resolve the dispute by entering into mediation with a mediator selected from the Panel Members of LAMA.

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

12.12 ENTIRE AGREEMENT. This Agreement (including the Schedules and any addenda hereto signed by both parties) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter, except as provided in Section 8.1 with respect to the definition of "Confidential Information."

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF ELGIN, TEXAS

SOUTH CENTRAL PLANNING AND
DEVELOPMENT COMMISSION THROUGH ITS
AGENT, CAPCOG

By:

By:

CHRIS CANNON, Mayor

Betty Voights, Executive Director

Date

Date

Witness

Date: _____

SCHEDULE A

INTERLOCAL CONTRACT

South Central Planning and Development Commission and Jurisdiction Government

SOFTWARE AND LICENSE FEE

A. SOFTWARE USE

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

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 - 100	\$10.00	\$99.00	\$99.00	\$99.00	\$230.00
101 - 500	\$10.00	\$260.42	\$156.25	\$99.00	\$230.00
501 - 1000	\$10.00	\$500.00	\$300.00	\$99.00	\$230.00
1001 - 2000	\$10.00	\$958.33	\$575.00	\$143.75	\$230.00
2001 - 4000	\$10.00	\$1,833.33	\$1,100.00	\$275.00	\$230.00
4001 - 6000	\$10.00	\$2,500.00	\$1,500.00	\$375.00	\$230.00
6001 - 8000	\$10.00	\$3,166.67	\$1,900.00	\$475.00	\$230.00
8001 - 10000	\$10.00	\$3,750.00	\$2,250.00	\$562.50	\$230.00
10001 - 12000	\$10.00	\$4,250.00	\$2,550.00	\$637.50	\$230.00
12001 - 14000	\$10.00	\$4,666.67	\$2,800.00	\$700.00	\$230.00
14001 - 16000	\$10.00	\$5,000.00	\$3,000.00	\$750.00	\$230.00
16001 - 18000	\$10.00	\$5,250.00	\$3,150.00	\$787.50	\$230.00
18001 - 30000	No Overage	\$5,416.67	\$3,250.00	\$812.50	\$230.00

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

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

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

Other Fees:

On-Site Vists: 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 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.

SCHEDULE B
COOPERATIVE ENDEAVOR USE AGREEMENT

South Central Planning and Development Commission and Jurisdiction

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

B.1 The following is the Equipment on which 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 Agreement, SCPDC shall provide a USER CREATION form to the Licensee to be used for Personnel account creation requests. Upon completion of the forms the licensee will return the forms to SCPDC or its AGENT and accounts shall be created in the system with information provided on the forms. Users can change the provided password on the form in the software after their first login. The personal user-name and personal access password will be maintained in camera and not distributed to the public. Additional personal user names and personal access passwords may be provided upon a written request to SCPDC with the user creation form providing the user name and confirmation that the user is an employee of Licensee is supplied to SCPDC, which will become an addendum to this schedule, such request will not be unreasonably withheld.

**SCHEDULE C
COOPERATIVE ENDEAVOR USE AGREEMENT**

South Central Planning and Development Commission and Jurisdiction

MAINTENANCE AND SUPPORT

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@scpdc.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 two (2) years. Maintenance and Support will automatically renew at the end of the initial term and any subsequent term for a renewal term of one (1) year unless Licensee has provided SCPDC with a written termination notice of its intention not to renew the Maintenance and Support at least ninety (90) days prior to the termination expiration of the then-current term. Termination of Maintenance and Support upon failure to renew will not affect the license of the Software.

3. **MAINTENANCE AND SUPPORT SERVICES.** Maintenance and Support will be provided only with respect to use of the versions of the Software that are being supported by SCPDC. SCPDC will provide multi-site backup of permit issuance data for permits supported by MyPermitNow system. SCPDC will provide 24-hour emergency service support, 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 MyPermitNow Software as they become available. Upon Licensee's request SCPDC will attempt, so long as practicable, to convert Licensee's current permit data for use with SCPDC Software. Upon Licensee's request SCPDC will, as long as practicable, will perform regularly scheduled exports of Licensee's permit and inspection data to Licensee's database. Within SCPDC's capabilities, SCPDC will perform customization of SCPDC Software based on Licensee's specific jurisdiction. Whenever possible, SCPDC will provide features in the SCPDC Software allowing Licensee to create and search variances and define relationships between variances and permits. SCPDC will provide remote support for the storage of photos, building/permits documents, inspection reports, plan review files and associated miscellaneous records. Within the capabilities of the SCPDC Software, and upon Licensee's request, SCPDC will provide Licensee with customized reports. The client will be expressly forbidden from creating add-ons or feature changes to that version or disclose the source code to any third party.

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

3.2 **BASIC MAINTENANCE.** Basic Maintenance means that SCPDC will provide during SCPDC's standard hours of service: (i) Updates and Minor Updates, when and if available, and related on-line Documentation, and (ii) telephone assistance with respect to the use of Software, including (a) clarification of functions and features of the Software; (b) clarification of the Documentation; (c) guidance in the use of the Software; and (d) error verification, analysis and correction to the extent possible by telephone. SCPDC's standard hours of service are Monday through Friday, 8:00 a.m. to 4:30 p.m., CST except for holidays as observed by SCPDC.

3.3 ON-SITE ASSISTANCE. At SCPDC's discretion, SCPDC can decide to provide Maintenance and Support at the Licensee Site. In such event 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:

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

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

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

3.5.4 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 Jurisdiction the maintenance fees are waived and the license fees cover all costs for maintenance and support for the terms of this Agreement.

6. ASSIGNMENT OF DUTIES. SCPDC may assign its duties of Maintenance and Support to a third party, provided that SCPDC will remain responsible for the actions of such third party. Any such assignment is subject to Licensee's consent, which consent shall not be unreasonably withheld or delayed.

7. Project Abandonment – Should SCPDC abandon development and support of My Permit Now system and can no longer fulfill its contractual obligations pursuant to this Agreement, the last stable source code release of My Permit Now Software will be licensed to 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.

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

Accepted:

CITY OF ELGIN, TEXAS

Date: _____

By: Chris Cannon, Mayor

Amelia Sanchez, City Secretary

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

By: Betty Voights, Executive Director

Date: _____



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: A Resolution to approve an agreement with South Central Planning & Development Commission (SCPDC), to provide software modules for Planning and Zoning, Building, and Code Enforcement to the City of Elgin, Texas for a minimum period of two (2) years and to authorize the Mayor to execute said agreement.

DEPARTMENT: Development Services

PROPOSED ACTION: Discussion, consideration, and action on a resolution to approve an agreement with South Central Planning & Development Commission (SCPDC), to provide software modules for Planning and Zoning, Building, and Code Enforcement to the City of Elgin, Texas for a minimum period of two (2) years and to authorize the Mayor to execute said agreement.

BACKGROUND: In September 2018, the City Council approved a contract with a third party called IworQ Systems to provide proprietary software for Building & Code Enforcement purposes. This contract was for a period of one (1) year. Presently this system needs module upgrades to handle additional storage capacity and incorporate planning & zoning functions for their applications. In order to increase the capacity of this system and add modules would increase the yearly cost from \$3,750 to around \$7,500 dollars (billed in 4 quarters).

In review of other permitting software in use within the Austin-Round Rock Metropolitan Area, many communities use a provider known as MyGovernmentOnline software. This consists of several modules able to handle building, planning & zoning, code enforcement. This software was created by the South-Central Planning & Development Commission (SCPDC) which is a governmental regional planning commission and political subdivision out of the New Orleans, LA Metropolitan Area. Currently the Capital Area Council of Governments (CAPCOG) is a signatory partner with SCPDC for their software.

Yearly cost to utilize the new software is based on the number of permits through the Department which is now between 500 and 1,000 permits a year for the building module. The code enforcement and planning & zoning modules are flat rates based off of the permit numbers in the building module. This would bring total costs to \$10,788 yearly (billed in 12 monthly installments of \$899.00). Additional separate costs will include one-time fees for online credit card establishment, minimum three (3) visits for training staff which consists of lodging, transportation, and meals.

BUDGET/FINANCIAL IMPACT:

Funding for this item was { } included {X} not included in the current-year budget { } N/A

RECOMMENDATION: Staff recommends the City Council approve this item.

ATTACHMENTS:

Resolution

{ } Staff will be making a detailed presentation on this agenda item at the meeting.

{X} Staff will provide brief comments and answer questions on this item at the meeting.

{ } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

RESOLUTION NO. 2020-02-18-??

A RESOLUTION TO APPROVE AN AGREEMENT WITH SOUTH CENTRAL PLANNING AND DEVELOPMENT COMMISSION (SCPDC), TO PROVIDE SOFTWARE MODULES FOR PLANNING AND ZONING, BUILDING, AND CODE ENFORCEMENT TO THE CITY OF ELGIN, TEXAS FOR A MINIMUM PERIOD OF TWO (2) YEARS AND TO AUTHORIZE THE MAYOR TO EXECUTE SAID AGREEMENT.

WHEREAS, the City utilizes iWorQ Systems software to track building permits, schedule inspections, and provide code enforcement services since October 2018; and

WHEREAS, the Capital Area Council of Governments (CAPCOG) has partnered with the SCPDC a regional planning commission and political subdivision of Louisiana to make CAPCOG a signatory agent in order assist in the execution of any contract concerning MyPermitNow, MyProjectNow, MyAddressNow, Inspection Anywhere and MyGovernmentOnline software (SCPDC software); and

WHEREAS, similar jurisdictions within the metropolitan Austin area including Cedar Park, Leander, Liberty Hill, Jonestown, Lago Vista, Buda, San Marcos, Taylor, Hutto, Manor, and Georgetown utilize the same SCPDC software; and

WHEREAS, it is advantageous to the City to utilize a software system endorsed by CAPCOG and currently being utilized by other cities in the metro area since developers, trades, contractors, subcontractors, and other governmental personal would be familiar with the software; and

WHEREAS, with the signing of a contract the SCPDC software would allow for the Development Services Dept. to utilize the Planning & Zoning and Building modules and allow the Code Enforcement Division of the Police Dept. to use the Code Enforcement Module in a unified system; and

WHEREAS, the signing of the contract gives the opportunity to expand into other modules that could assist other Departments such as Public Works through another approved resolution.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ELGIN, TEXAS

The City Council approves the Agreement with SCPDC, as shown in Exhibit "A" attached and that the Mayor is authorized on behalf of the City to execute said agreement which is incorporated herein for all purposes and that SCPDC shall provide said services as stipulated in the Agreement.

PASSED, and **APPROVED** on this 18th day of February 2020.

CHRIS CANNON, MAYOR

ATTEST:

Amelia Sanchez, City Secretary

INTERLOCAL CONTRACT FOR LICENSING SCPDC SOFTWARE

Sec. 1. Parties and Purpose

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

1.2. The City of Elgin, Texas ("Licensee") is a Texas home-rule city.

1.3. The South Central Planning and Development Commission (Licensor) ("SCPDC") is a regional planning commission and Political Subdivision of the State of Louisiana, domiciled in Terrebonne Parish. The district was established in 1973 and created by law in 1978 under state act 472. The statute allows its member governmental entities to come together through SCPDC to provide long range planning, act as a state and federal liaison, provide guidance and study to current issues affecting government, and provide services to business and citizens.

1.4. SCPDC has created MyPermitNow, MyProjectNow, MyAddressNow, Inspection Anywhere and MyGovernmentOnline software (the "SCPDC Software") and this contract is entered into among Licensee, and SCPDC under chapter 791 of the Government Code to license Contractor to use the SCPDC Software under certain terms and conditions. CAPCOG has been granted a limited power of attorney by SCPDC to execute this contract on SCPDC's behalf.

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

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

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

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

2.5 "MAJOR AND MINOR UPDATES" shall mean updates, if any, to the SCPDC Software. Major Updates involve additions of substantial functionality while Minor Updates do not. Major Updates are designated by a change in the number to the left of the decimal point of the number appearing after the product name while Minor Updates are designated by a change in such number to the right of the decimal point. Example, 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 specified in Schedule A and otherwise provided for Licensee use pursuant to this Agreement.

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

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

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

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-bearing user license during the term of this Agreement 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 My Permit Now, 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 the SCPDC's Software, and reserve all rights therein not expressly granted under this Agreement. This license transfers to Licensee neither title nor any proprietary or intellectual property rights to the Software, Documentation, or any copyrights, patents, or trademarks, embodied or used in connection therewith, except for the rights expressly granted herein.

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

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

(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. Licensee hereby shall indemnify and hold harmless SCPDC from and against all losses, costs, liabilities and expenses arising out of or relating to any breach by Licensee of this agreement, use of the software, or as a result of the carelessness, negligence or improper conduct of Licensee, its agents, employees or representatives.

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

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

4. 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.

5. LICENSE FEE

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

5.2 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 Agreement (other than taxes on the net income of SCPDC).

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

6. 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 Agreement and in such event SCPDC shall have the right to terminate the rights granted hereunder with respect to such site for the term of this Agreement.

7. LIMITED WARRANTY AND LIMITATION OF LIABILITY

7.1 LIMITED WARRANTY. SCPDC warrants for the term of the contract from the Effective Date (the "Warranty Period") the Software will perform in substantial accordance with the Documentation under normal use. If during the Warranty Period the Software does not perform as warranted (a "Non-Conformance"), SCPDC shall undertake to correct such Non-Conformance, or if correction is reasonably not possible, replace such Software free of charge. If neither of the foregoing is commercially practicable, SCPDC shall terminate this Agreement and refund to Licensee the License Fee. THE FOREGOING ARE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY. The warranty set forth above is made to and for the benefit of Licensee only. The warranty will apply only if:

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

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

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

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

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

7.2 **DISCLAIMER.** EXCEPT AS SET FORTH ABOVE, SCPDC MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO THE SOFTWARE OR THE DOCUMENTATION, OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO LICENSEE UNDER THIS AGREEMENT, INCLUDING MAINTENANCE AND SUPPORT. SCPDC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND 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.

7.3 **LIMITATION OF LIABILITY.** IN NO EVENT WILL SCPDC BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SOFTWARE OR SERVICES PERFORMED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF SCPDC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, SCPDC WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN DELIVERY OR FURNISHING THE SOFTWARE OR SAID SERVICES. SCPDC'S LIABILITY UNDER THIS AGREEMENT FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, RESTITUTION, WILL NOT, IN ANY EVENT, EXCEED THE LICENSE FEE PAID BY LICENSEE TO SCPDC UNDER THIS AGREEMENT.

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

7.5 **CLAIMS.** No action arising out of any breach or claimed breach of this Agreement or transactions contemplated by this Agreement may be brought by either party more than one (1) year after the cause of action has accrued. For purposes of this Agreement, 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.

7.6 **LIMITATION.** The foregoing obligations shall not apply to the extent the infringement arises as a result of modifications to the Software made by any party other than SCPDC or SCPDC's authorized representative.

7.7 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.

7.8 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 agreement, use of the software, or as a result of the carelessness, negligence or improper conduct of Licensee, its agents, employees or representatives.

8. CONFIDENTIALITY

8.1 CONFIDENTIAL INFORMATION. Each party acknowledges that the Confidential Information constitutes valuable trade secrets and each party agrees that it shall use Confidential Information solely in accordance with the provisions of this Agreement and will not disclose, or permit to be disclosed, the same, directly or indirectly, to any third party without the other party's prior written consent. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. Furthermore, it is understood that the terms of this Agreement 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 Statute 44:1 et seq., (ii) already in the other party's possession and not subject to a confidentiality obligation, (iii) obtained by the other party from third parties without restrictions on disclosure, (iv) independently developed by the other party without reference to Confidential Information, or (v) required to be disclosed by order of a court or other governmental entity. Nothing herein will prevent routine discussions by the parties that normally take place in a "user group" context.

8.2 INJUNCTIVE RELIEF. In the event of actual or threatened breach of the provisions of Section 9.1, the non-breaching party will have no adequate remedy at law and will be entitled to immediate and injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

9. TERM AND TERMINATION

9.1 TERM. This Agreement will take effect on the Effective Date and will remain in force **for a period of two (2) years thereafter**. The contract will automatically renew for 12-months periods following the end of the initial term unless terminated in accordance with this Agreement.

9.2 TERMINATION. This Agreement is terminated by:

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

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

days after SCPDC gives Licensee written notice of such breach; or (iii) Licensee becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes; or (iv) SCPDC elects to refund Licensee's fees.

9.3 EFFECT OF TERMINATION. If any Termination Event occurs, termination will become effective immediately or on the date set forth in the written notice of termination. Termination of this Agreement will not affect the provisions regarding Licensee's or SCPDC's treatment of Confidential Information, provisions relating to the payment of amounts due, or provisions limiting or disclaiming SCPDC's liability, which provisions will survive termination of this Agreement. Within fourteen (14) 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.

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

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

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

To: South Central Planning and
District Commission

To:

Address: 5058 West Main St.
Houma, LA 70360

Address:

12. MISCELLANEOUS

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

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

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

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

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

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

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

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

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

12.10 **DISPUTE RESOLUTION.** The parties have entered into this Agreement voluntarily and in good faith. As a result, if any dispute, claim or controversy ("dispute") arises between them, unless otherwise provided in this Agreement, they agree that they will first attempt to resolve the dispute by entering into mediation with a mediator selected from the Panel Members of LAMA.

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

12.12 ENTIRE AGREEMENT. This Agreement (including the Schedules and any addenda hereto signed by both parties) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter, except as provided in Section 8.1 with respect to the definition of "Confidential Information."

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF ELGIN, TEXAS

SOUTH CENTRAL PLANNING AND
DEVELOPMENT COMMISSION THROUGH ITS
AGENT, CAPCOG

By:

By:

XXXXXXX, TITLE

Betty Voights, Executive Director

Date

Date

Witness

Date: _____

SCHEDULE A

INTERLOCAL CONTRACT

South Central Planning and Development Commission and Jurisdiction Government

SOFTWARE AND LICENSE FEE

A. SOFTWARE USE

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

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 - 100	\$10.00	\$99.00	\$99.00	\$99.00	\$230.00
101 - 500	\$10.00	\$260.42	\$156.25	\$99.00	\$230.00
501 - 1000	\$10.00	\$500.00	\$300.00	\$99.00	\$230.00
1001 - 2000	\$10.00	\$958.33	\$575.00	\$143.75	\$230.00
2001 - 4000	\$10.00	\$1,833.33	\$1,100.00	\$275.00	\$230.00
4001 - 6000	\$10.00	\$2,500.00	\$1,500.00	\$375.00	\$230.00
6001 - 8000	\$10.00	\$3,166.67	\$1,900.00	\$475.00	\$230.00
8001 - 10000	\$10.00	\$3,750.00	\$2,250.00	\$562.50	\$230.00
10001 - 12000	\$10.00	\$4,250.00	\$2,550.00	\$637.50	\$230.00
12001 - 14000	\$10.00	\$4,666.67	\$2,800.00	\$700.00	\$230.00
14001 - 16000	\$10.00	\$5,000.00	\$3,000.00	\$750.00	\$230.00
16001 - 18000	\$10.00	\$5,250.00	\$3,150.00	\$787.50	\$230.00
18001 - 30000	No Overage	\$5,416.67	\$3,250.00	\$812.50	\$230.00

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

The Jurisdiction has agreed to the 501 – 1000 Permit Volume package. It is understood this will be billed on a leveled 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 (Code Enforcement), Addressing / GIS Integration may be activated by request during the term of this agreement for the monthly rates defined in the rate chart in Schedule A that corresponds to the jurisdictions selected permit package. In the event the jurisdiction makes a change to the original permit package chosen, the monthly rate shall change to correspond with the rate chart as shown in Schedule A.

Other Fees:

On-Site Vists: 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 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.

SCHEDULE B

COOPERATIVE ENDEAVOR USE AGREEMENT

South Central Planning and Development Commission and Jurisdiction

EQUIPMENT SITE, USER NAME, AND PERSONAL ACCESS PASSWORD

B.1 The following is the Equipment on which 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 Agreement, SCPDC shall provide a USER CREATION form to the Licensee to be used for Personnel account creation requests. Upon completion of the forms the licensee will return the forms to SCPDC or its AGENT and accounts shall be created in the system with information provided on the forms. Users can change the provided password on the form in the software after their first login. The personal user name and personal access password will be maintained in camera and not distributed to the public. Additional personal user names and personal access passwords may be provided upon a written request to SCPDC with the user creation form providing the user name and confirmation that the user is an employee of Licensee is supplied to SCPDC, which will become an addendum to this schedule, such request will not be unreasonably withheld.

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

MAINTENANCE AND SUPPORT

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@scpdc.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 **two (2) years**. Maintenance and Support will automatically renew at the end of the initial term and any subsequent term for a renewal term of one (1) year unless Licensee has provided SCPDC with a written termination notice of its intention not to renew the Maintenance and Support at least ninety (90) days prior to the termination expiration of the then-current term. Termination of Maintenance and Support upon failure to renew will not affect the license of the Software.

3. **MAINTENANCE AND SUPPORT SERVICES.** Maintenance and Support will be provided only with respect to use of the versions of the Software that are being supported by SCPDC. SCPDC will provide multi-site backup of permit issuance data for permits supported by MyPermitNow system. SCPDC will provide 24-hour emergency service support, 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 MyPermitNow Software as they become available. Upon Licensee's request SCPDC will

attempt, so long as practicable, to convert Licensee's current permit data for use with SCPDC Software. Upon Licensee's request SCPDC will, as long as practicable, will perform regularly scheduled exports of Licensee's permit and inspection data to Licensee's database. Within SCPDC's capabilities, SCPDC will perform customization of SCPDC Software based on Licensee's specific jurisdiction. Whenever possible, SCPDC will provide features in the SCPDC Software allowing Licensee to create and search variances and define relationships between variances and permits. SCPDC will provide remote support for the storage of photos, building/permits documents, inspection reports, plan review files and associated miscellaneous records. Within the capabilities of the SCPDC Software, and upon Licensee's request, SCPDC will provide Licensee with customized reports. The client will be expressly forbidden from creating add-ons or feature changes to that version or disclose the source code to any third party.

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

3.2 BASIC MAINTENANCE. Basic Maintenance means that SCPDC will provide during SCPDC's standard hours of service: (i) Updates and Minor Updates, when and if available, and related on-line Documentation, and (ii) telephone assistance with respect to the use of Software, including (a) clarification of functions and features of the Software; (b) clarification of the Documentation; (c) guidance in the use of the Software; and (d) error verification, analysis and correction to the extent possible by telephone. SCPDC's standard hours of service are Monday through Friday, 8:00 a.m. to 4:30 p.m., CST except for holidays as observed by SCPDC.

3.3 ON-SITE ASSISTANCE. At SCPDC's discretion, SCPDC can decide to provide Maintenance and Support at the Licensee Site. In such event 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:

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

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

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

3.5.4 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 Jurisdiction the maintenance fees are waived and the license fees cover all costs for maintenance and support for the terms of this Agreement.

6. ASSIGNMENT OF DUTIES. SCPDC may assign its duties of Maintenance and Support to a third party, provided that SCPDC will remain responsible for the actions of such third party. Any such assignment is subject to Licensee's consent, which consent shall not be unreasonably withheld or delayed.

7. Project Abandonment – Should SCPDC abandon development and support of My Permit Now system and can no longer fulfill its contractual obligations pursuant to this Agreement, the last stable source code release of My Permit Now Software will be licensed to 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.

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

Accepted:

CITY OF ELGIN, TEXAS

By: Chris Cannon, Mayor

Date: _____

Amelia Sanchez, City Secretary

Date: _____

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

By: Betty Voights, Executive Director

Date: _____



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: A Resolution to reappoint Councilor Jessica Bega to a two (2) year term on the Clean Air Coalition (CAC) as a Committee Member representing the City of Elgin from January 1, 2020 to January 1, 2022.

DEPARTMENT: Development Services.

PROPOSED ACTION: Discussion, consideration, and action on a resolution to re-appointing Jessica Bega to a two (2) year term on the Clean Air Coalition (CAC) as a Committee Member representing the City of Elgin from January 1, 2020 to January 1, 2022.

BACKGROUND: The City is a member of the CAC which is a Committee under the Capital Area Council of Governments (CAPCOG). This membership consists of elected officials from the Austin-Round Rock Metropolitan Statistical Area (MSA) who signed the Central Texas eight (8) hour Ozone Flex Plan (8-O3 Flex). This Plan is an agreed regional initiative to reduce ozone pollution. Previously the City appointed Jessica Bega for a previous two (2) year CAC term starting on January 1, 2018.

BUDGET/FINANCIAL IMPACT:

Funding for this item was { } included {X} not included in the current-year budget { } N/A

RECOMMENDATION: N/A

ATTACHMENTS:

Resolution

- { } Staff will be making a detailed presentation on this agenda item at the meeting.
- { } Staff will provide brief comments and answer questions on this item at the meeting.
- {X} This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

RESOLUTION NO. 2020-02-18-??

A RESOLUTION TO REAPPOINT JESSICA BEGA TO A TWO (2) YEAR TERM ON THE CLEAN AIR COALITION (CAC) AS A COMMITTEE MEMBER REPRESENTING THE CITY OF ELGIN FROM JANUARY 1, 2020 TO JANUARY 1, 2022.

WHEREAS, the City is a member of the CAC provided through the Capital Area Council of Governments (CAPCOG), and

WHEREAS, the CAC membership is comprised of elected officials from the five (5) county Austin-Round Rock Metropolitan Statistical Area (MSA), who signed the Central Texas eight (8) hour Ozone Flex Plan (8-O3 Flex), and

WHEREAS, for the City to have a voice on the CAC it is necessary to have an elected official from the City be a representative on this Committee.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ELGIN, TEXAS

The City Council re-appoints Jessica Bega to a two (2) year term from January 1, 2020 to January 1, 2022.

PASSED, and **APPROVED** on this 18th day of February 2020.

CHRIS CANNON, MAYOR

ATTEST:

Amelia Sanchez, City Secretary

David Harrell

From: Jessica Bega
Sent: Thursday, February 6, 2020 2:17 PM
To: David Harrell
Cc: Tom Mattis
Subject: Re: Re-appointment to Clean Air Coalition (CAC) through CAPCOG

Hi, David, Thanks again. I received the same packet from Melissa just today. This packet is for the upcoming Clean Air Coalition meeting. I sit on this (CAC) board and you sit on the subcommittee which is the Clean Air Coalition Advisory Committee. I did not know the advisory committee also received the same packet unless it was a mistake by Melissa since she is new. As you know, the subcommittee has its own meetings and agenda.

So, yes, let's go ahead and have an agenda item placed on the next agenda (Feb. 18th) to have me reappointed. I do not mind serving another term.

Thanks again for the notice and please let me know if you have additional questions.

Thanks,
Jessica

From: David Harrell <dharrell@ci.elgin.tx.us>
Sent: Thursday, February 6, 2020 11:21 AM
To: Jessica Bega <jbega@ci.elgin.tx.us>
Cc: Tom Mattis <TMattis@ci.elgin.tx.us>
Subject: RE: Re-appointment to Clean Air Coalition (CAC) through CAPCOG

Jessica,

The person reaching out to me is named Melinda Schweitzer (see attached email for info and 2-20-2020 CAC packet).

David Harrell, AICP
Development Services Director
Development Services Dept.
City of Elgin, TX
Direct: 512-229-3254
Main: 512-285-6641



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: An ordinance approving a new Municipal Maintenance Agreement (MMA) between the State of Texas and the City of Elgin for the maintenance, control, supervision, and regulation of certain State highways and/or portions of State highways in the City; and providing the execution of said agreement and declaring an emergency.

DEPARTMENT: Development Services.

PROPOSED ACTION: Discussion, consideration, and action on an ordinance approving a new Municipal Maintenance Agreement (MMA) between the State of Texas and the City of Elgin for the maintenance, control, supervision, and regulation of certain State highways and/or portions of State highways in the City; and providing the execution of said agreement and declaring an emergency.

BACKGROUND: In 1998 the City adopted a new MMA which covered the role of the City and TxDOT regarding maintenance, operation, and mandates on controlled access and non-controlled access State roadways. These agreements can be modified with the adoption of additional exhibits to the original agreement for items such as placement of structures in the State right-of-way.

The building located at 110 S. Main will be placing a new canopy over the sidewalk within the State right-of-way. Since the new canopy will be larger in size than the original, they State desires a modification. Upon further review and due to age of the current document, TxDOT has asked the City to sign a new MMA that will also cover the new canopy as an exhibit.

The only changes between the new MMA and the 1998 MMA will involve removal of the exhibit regarding red light cameras (prohibited by State law), addition of an exhibit for the new canopy at 110 S. Main St, and changes as highlighted in the attached agreement.

BUDGET/FINANCIAL IMPACT:

Funding for this item was { } included { } not included in the current-year budget {X} N/A

RECOMMENDATION: City staff recommends approval of the Ordinance.

ATTACHMENTS: Ordinance.

{ } Staff will be making a detailed presentation on this agenda item at the meeting.

{X} Staff will provide brief comments and answer questions on this item at the meeting.

{ } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

ORDINANCE NO. 2020-02-18-??

AN ORDINANCE APPROVING A NEW MUNICIPAL MAINTENANCE AGREEMENT (MMA) BETWEEN THE STATE OF TEXAS AND THE CITY OF ELGIN FOR THE MAINTENANCE, CONTROL, SUPERVISION, AND REGULATION OF CERTAIN STATE HIGHWAYS AND/OR PORTIONS OF STATE HIGHWAYS IN THE CITY; AND PROVIDING THE EXECUTION OF SAID AGREEMENT AND DECLARING AN EMERGENCY.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ELGIN, TEXAS, THAT:

SECTION 1. That the certain agreement dated February 18, 2020, between the State of Texas and the City of Elgin, Texas for the maintenance, control, supervision, and regulation of certain State Highways and/or portions of State Highways in the City of Elgin be, and the same is, hereby approved; and that City Manager Thomas “Tom” Mattis is hereby authorized to execute said agreement on behalf of the City of Elgin and to transmit the same to the State of Texas for appropriate action.

SECTION 2. The fact that the work contemplated under the above mentioned agreement is needed, creates an emergency which for the immediate preservation of public peace, health, safety, and general welfare requires that this Ordinance take effect immediately from and after its passage and it is accordingly so ordained.

READ, PASSED, and ADOPTED on first reading this the 18th day of February 2020.

CHRIS CANNON, MAYOR

ATTEST:

Amelia Sanchez, City Secretary



MUNICIPAL MAINTENANCE AGREEMENT

Form 1038
(Rev. 03/12)
Page 1 of 6

STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS AGREEMENT made this 18 day of February 20 20, by and between the State of Texas, hereinafter referred to as the "State," party of the first part, and the City of Elgin (population 8,135, 2010, latest Federal Census) acting by and through its duly authorized officers, hereinafter called the "City," party of the second part.

WITNESSETH

WHEREAS, Chapter 311 of the Transportation Code gives the City exclusive dominion, control, and jurisdiction over and under the public streets within its corporate limits and authorizes the City to enter agreements with the State to fix responsibilities for maintenance, control, supervision, and regulation of State highways within and through its corporate limits; and

WHEREAS, Section 221.002 of the Transportation Code authorizes the State, at its discretion, to enter agreements with cities to fix responsibilities for maintenance, control, supervision, and regulation of State highways within and through the corporate limits of such cities; and

WHEREAS, the Executive Director, acting for and in behalf of the Texas Transportation Commission, has made it known to the City that the State will assist the City in the maintenance and operation of State highways within such City, conditioned that the City will enter into agreements with the State for the purpose of determining the responsibilities of the parties thereto; and

WHEREAS, the City has requested the State to assist in the maintenance and operation of State highways within such City:

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed, it is agreed as follows:

For this agreement, the use of the words "State Highway" shall be construed to mean all numbered highways that are part of the State's Highway System.

COVERAGE

1. This agreement is intended to cover and provide for State participation in the maintenance and operation of the following classifications of State Highways within the City:
 - A. Non-Controlled Access highways or portions thereof which are described and/or graphically shown as "State Maintained and Operated" highways in Exhibit "A," which is attached hereto and made a part hereof.
 - B. All State highways or portions thereof which have been designated by the Texas Transportation Commission or maintained and operated as Controlled Access Highways and which are described and/or graphically shown in Exhibit "B," which is attached hereto and made a part hereof.
2. In the event that the present system of State highways within the City is changed by cancellation, modified routing, or new routes, the State will terminate maintenance and operation and this agreement will become null and void on those portions of the highways which are no longer on the State Highway System; and the full effect and all conditions of this agreement will apply to the changed highways or new highways on the State Highway System within the City; and they shall be classified as "State Maintained and Operated" under paragraph 1 above, unless the execution of a new agreement on the changed or new portions of the highways is requested by either the City or the State.
3. Exhibits that are a part of this agreement may be changed with both parties' written concurrence. Additional exhibits may also be added with both parties' written concurrence.

GENERAL CONDITIONS

1. The City authorizes the State to maintain and operate the State highways covered by this agreement in the manner set out herein.
2. This agreement is between the State and the City only. No person or entity may claim third party beneficiary status under this contract or any of its provisions, nor may any non-party sue for personal injuries or property damage under this contract.
3. This agreement is for the purpose of defining the authority and responsibility of both parties for maintenance and operation of State highways through the City. This agreement shall supplement any special agreements between the State and the City for the maintenance, operation, and/or construction of the State highways covered herein, and this agreement shall supersede any existing Municipal Maintenance Agreements.
4. Traffic regulations, including speed limits, will be established only after traffic and engineering studies have been completed by the State and/or City and approved by the State.
5. The State will erect and maintain all traffic signs and associated pavement markings necessary to regulate, warn, and guide traffic on State highways within the State right-of-way except as mentioned in this paragraph and elsewhere in this agreement. At the intersections of off-system approaches to State highways, the City shall install and maintain all stop signs, yield signs, and one-way signs and any necessary stop or yield bars and pedestrian crosswalks outside the main lanes or outside the frontage roads, if such exist. The City shall install and maintain all street name signs except for those mounted on State maintained traffic signal poles or arms or special advance street name signs on State right-of-way. All new signs installed by the City on State right-of-way shall meet or exceed the latest State breakaway standards and be in accordance with the *Texas Manual on Uniform Traffic Control Devices*, latest edition and revision. All existing signs shall be upgraded on a maintenance replacement basis to meet these requirements.
6. Subject to approval by the State, any State highway lighting system may be installed by the City provided the City shall pay or otherwise provide for all cost of installation, maintenance, and operation except in those installations specifically covered by separate agreements between the City and State.

7. The City shall enforce the State laws governing the movement of loads which exceed the legal limits for weight, length, height, or width as prescribed by Chapters 621, 622, and 623 of the Transportation Code for public highways outside corporate limits of cities. The City shall also, by ordinance/resolution and enforcement, prescribe and enforce lower weight limits when mutually agreed by the City and the State that such restrictions are needed to avoid damage to the highway and/or for traffic safety.
8. The City shall prevent future encroachments within the right-of-way of the State highways and assist in removal of any present encroachments when requested by the State except where specifically authorized by separate agreement; and prohibit the planting of trees or shrubbery or the creation or construction of any other obstruction within the right-of-way without prior approval in writing from the State.
9. Traffic control devices such as signs, traffic signals, and pavement markings, with respect to type of device, points of installation and necessity, will be determined by traffic and engineering studies. The City shall not install, maintain, or permit the installation of any type of traffic control device which will affect or influence the use of State highways unless approved in writing by the State. Traffic control devices installed prior to the date of this agreement are hereby made subject to the terms of this agreement and the City agrees to the removal of such devices which affect or influence the use of State highways unless their continued use is approved in writing by the State. It is understood that basic approval for future installations of traffic control signals by the State or as a joint project with the City, will be indicated by the proper City official's signature on the title sheet of the plans. Both parties should retain a copy of the signed title sheet or a letter signed by both parties acknowledging which signalized intersections are covered by this agreement. Any special requirements not covered within this agreement will be covered under a separate agreement.
10. New construction of sidewalks, ramps or other accessibility related items shall comply with current ADA standards. The city is responsible for the maintenance of these items.
11. If the City has a driveway permit process that has been submitted to and approved by the State, the City will issue permits for access driveways on State Highway routes and will assure the grantee's conformance, for proper installation and maintenance of access driveway facilities, with either a Local Access Management Plan that the City has adopted by ordinance and submitted to the State or, if the City has not adopted by ordinance and submitted to the State a Local Access Management Plan, the State's "Regulations for Access Driveways to State Highways" and the State's Access Management Manual. If the City does not have an approved city-wide driveway permit process, the State will issue access driveway permits on State highway routes in accordance with the City's Local Access Management Plan, adopted by city ordinance and submitted to the State or, if the City has not adopted by ordinance and submitted a Local Access Management Plan, the State's "Regulations for Access Driveways to State Highways" and the State's Access Management Manual.
12. The use of unused right-of-way and areas beneath structures will be determined by a separate agreement

NON-CONTROLLED ACCESS HIGHWAYS

The following specific conditions and responsibilities shall be applicable to non-controlled access State highways in addition to the "General Conditions" contained herein above. Non-controlled access State highways or portions thereof covered by this section are those listed and/or graphically shown in Exhibit "A."

State's Responsibilities (Non-Controlled Access)

1. Maintain the traveled surface and foundation beneath such traveled surface necessary for the proper support of same under vehicular loads encountered and maintain the shoulders.
2. Assist in mowing and litter pickup to supplement City resources when requested by the City and if State resources are available.
3. Assist in sweeping and otherwise cleaning the pavement to supplement City resources when requested by the City and if State resources are available.

4. Assist in snow and ice control to supplement City resources when requested by the City and if State resources are available.
5. Maintain drainage facilities within the limits of the right-of-way and State drainage easements. This does not relieve the City of its responsibility for drainage of the State highway facility within its corporate limits.
6. Install, maintain, and operate, when required, normal regulatory, warning and guide signs and normal markings (except as provided under "General Conditions" in paragraph 5). In cities with less than 50,000 population, this also includes school safety devices, school crosswalks, and crosswalks installed in conjunction with pedestrian signal heads. This does not include other pedestrian crosswalks. Any other traffic striping desired by the City may be placed and maintained by the City subject to written State approval.
7. Install, operate, and maintain traffic signals in cities with less than 50,000 population.
8. In cities equal to or greater than 50,000 population, the State may provide for installation of traffic signals when the installation is financed in whole or in part with federal-aid funds if the City agrees to enter into an agreement setting forth the responsibilities of each party.

City's Responsibilities (Non-Controlled Access)

1. Prohibit angle parking, except upon written approval by the State after traffic and engineering studies have been conducted to determine if the State highway is of sufficient width to permit angle parking without interfering with the free and safe movement of traffic.
2. Install and maintain all parking restriction signs, pedestrian crosswalks [except as provided in paragraph 6 under "State's Responsibilities (Non-Controlled Access)"], parking stripes and special guide signs when agreed to in writing by the State. Cities greater than or equal to 50,000 population will also install, operate, and maintain all school safety devices and school crosswalks.
3. Signing and marking of intersecting city streets with State highways will be the full responsibility of the City (except as provided under "General Conditions" in paragraph 5).
4. Require installations, repairs, removals or adjustments of publicly or privately owned utilities or services to be performed in accordance with Texas Department of Transportation specifications and subject to approval of the State in writing.
5. Retain all functions and responsibilities for maintenance and operations which are not specifically described as the responsibility of the State. The assistance by the State in maintenance of drainage facilities does not relieve the City of its responsibility for drainage of the State highway facility within its corporate limits except where participation by the State is specifically covered in a separate agreement between the City and the State.
6. Install, maintain, and operate all traffic signals in cities equal to or greater than 50,000 population. Any variations will be handled by a separate agreement.
7. Perform mowing and litter pickup.
8. Sweep and otherwise clean the pavement.
9. Perform snow and ice control.

CONTROLLED ACCESS HIGHWAYS

The following specific conditions and responsibilities shall be applicable to controlled access highways in addition to the "General Conditions" contained herein above. Controlled access State highways or portions thereof covered by this section are those listed and/or graphically shown in Exhibit "B."

State's Responsibilities (Controlled Access)

1. Maintain the traveled surface of the through lanes, ramps, and frontage roads and foundations beneath such traveled surface necessary for the proper support of same under vehicular loads encountered.
2. Mow and clean up litter within the outermost curbs of the frontage roads or the entire right-of-way width where no frontage roads exist and assist in performing these operations between the right-of-way line and the outermost curb or crown line of the frontage roads in undeveloped areas.
3. Sweep and otherwise clean the through lanes, ramps, separation structures or roadways and frontage roads.
4. Remove snow and control ice on the through lanes and ramps and assist in these operations as the availability of equipment and labor will allow on the frontage roads and grade separation structures or roadways.
5. Except as provided under "General Conditions" in paragraph 5, the State will install and maintain all normal markings and signs, including sign operation if applicable, on the main lanes and frontage roads. This includes school safety devices, school crosswalks and crosswalks installed on frontage roads in conjunction with pedestrian signal heads. It does not include other pedestrian crosswalks.
6. Install, operate and maintain traffic signals at ramps and frontage road intersections unless covered by a separate agreement.
7. Maintain all drainage facilities within the limits of the right-of-way and State drainage easements. This does not relieve the City of its responsibility for drainage of the highway facility within its corporate limits.

City's Responsibilities (Controlled Access)

1. Prohibit, by ordinance or resolution and through enforcement, all parking on frontage roads except when parallel parking on one side is approved by the State in writing. Prohibit all parking on main lanes and ramps and at such other places where such restriction is necessary for satisfactory operation of traffic, by passing and enforcing ordinances/resolutions and taking other appropriate action in addition to full compliance with current laws on parking.
2. When considered necessary and desirable by both the City and the State, the City shall pass and enforce an ordinance/resolution providing for one-way traffic on the frontage roads except as may be otherwise agreed to by separate agreements with the State.
3. Secure or cause to be secured the approval of the State before any utility installation, repair, removal or adjustment is undertaken, crossing over or under the highway facility or entering the right-of-way. In the event of an emergency, it being evident that immediate action is necessary for protection of the public and to minimize property damage and loss of investment, the City, without the necessity of approval by the State, may at its own responsibility and risk make necessary emergency utility repairs, notifying the State of this action as soon as practical.
4. Pass necessary ordinances/resolutions and retain its responsibility for enforcing the control of access to the expressway/freeway facility.
5. Install and maintain all parking restriction signs, pedestrian crosswalks (except as mentioned above in paragraph 5 under "State's Responsibilities") and parking stripes when agreed to by the State in writing. Signing and marking of intersecting city streets to State highways shall be the full responsibility of the City (except as discussed under "General Conditions" in paragraph 5).

TERMINATION

All obligations of the State created herein to maintain and operate the State highways covered by this agreement shall terminate if and when such highways cease to be officially on the State highway system; and further, should either party fail to properly fulfill its obligations as herein outlined, the other party may terminate this agreement upon 30 days written notice. Upon termination, all maintenance and operation duties on non-controlled access State highways shall revert to City responsibilities, in accordance with Chapter 311 of the Texas Transportation Code. The State shall retain all maintenance responsibilities on controlled access State highways in accordance with the provisions of Chapter 203 of the Texas Transportation Code and 23 United States Code Section 116.

Said State assumption of maintenance and operations shall be effective the date of execution of this agreement by the Texas Department of Transportation.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures, the City of _____

on the _____ day of _____, 20____, and the Texas Department of Transportation, on the _____ day of _____, 20____.

ATTEST:

CITY OF _____

BY _____

(Title of Signing Official)

THE STATE OF TEXAS

Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, and established policies or work programs heretofore approved and authorized by the Texas Transportation Commission

BY _____

(District Engineer)

_____ District

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under Sections 552.021 and 552.023 of the Government Code, you also are entitled to receive and review this information. Under Section 559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect. For more information, call 512/416-3048.

NOTE: To be executed in duplicate and supported by Municipal Maintenance Ordinance/Resolution and City Secretary Certificate.

EXHIBIT A

**TABLE 1
NON-CONTROLLED ACCESS HIGHWAYS
(SEE FIGURE A-1)**

HWY	DESCRIPTION
US290	From west City limits to east City limits
SH95	From north City limits to south City limits
SL109	From SH95 to US290
FM1100	From west City limits to SL109
FM3000	From SL109 to City limits
FM1704	From SL109 to south City limits

Maintenance Activity/Facility-Type	Responsibility	
	State	City
Traffic control signs and pavement striping/markings, highway routing signs.	X	
All pavement base and surface maintenance, repair, reconstruction, and resurfacing.	X	
Assist with mowing, sweeping, cleaning and litter control to supplement City resources when requested by the City and if State resources are available.	X	
Assist with snow and ice control to supplement City resources when requested by the City and if State resources are available.	X	
Assist with emergency/non-emergency call-outs to supplement City resources when requested by the City and if State resources are available.	X	
All pedestrian and bicycle assets including pedestrian bridges, pedestrian rails, sidewalks, curb ramps, shared use path, bike lanes, bikeways or trails.		X
Drainage facilities outside of normal highway right-of-way.		X
All duties not specifically delineated as being State's responsibility.		X

City of Elgin

Figure A-1

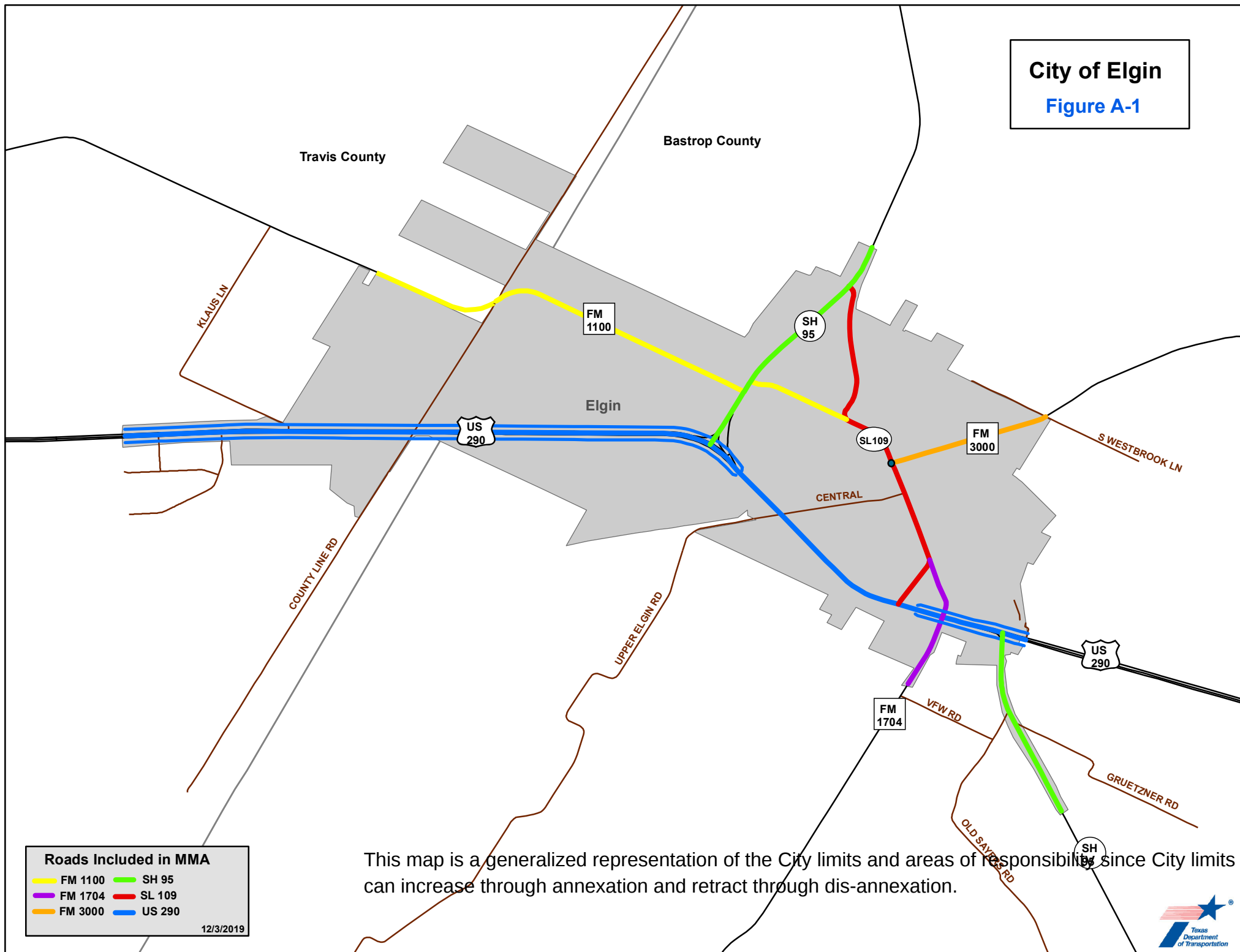


EXHIBIT B

110 S. Main

Elgin, TX

Awning Dimensions: 10' x 50'

Material: There will be 7 trusses comprised of 1" square tubing. The trusses will be approximately 4'-6" deep against the building reducing in depth to approximately 12" at their extents. The cover material will be corrugated metal.

Installation: The trusses and installation are being provided by Tiger Flores of Earthen Metals in Elgin Texas. The trusses are designed for appropriate wind and gravity loading.

Installation, maintenance, upkeep, repairs or replacements of the asset shall be the sole responsibility of the property owner and shall be conducted at no cost to the state. The State, its contractors, or the traveling public will not be held liable for damages that may occur to the asset. This includes but is not limited to damages from utility installation or repair, motor vehicles, construction or maintenance activities by the State.



EXHIBIT C

CONTROLLED ACCESS HIGHWAYS

At the time of execution of this agreement no controlled access highways were located within the city limits of Elgin.

If future controlled access highways are constructed then this agreement will be amended accordingly.