NOBEL SYSTEMS, INC.

SOFTWARE LICENSE AGREEMENT

29701

Nobel Systems ("Licensor") and the City of Long Beach ("Licensee") enter into the following Software License Agreement:

RECITALS

A. Licensor develops and markets geographic information software applications known as GeoViewer Online (the "Software"), which is more particularly described in the user manuals and other written materials created by Licensor to describe the functionality and use of the Software (the "Documentation"); and

B. Licensee desires to acquire a license to use the Software and Documentation for viewing GIS data and other assorted data sets, and Licensor desires to grant Licensee the license.

TERMS OF AGREEMENT

1. **DEFINITIONS.**

   a) **"Affiliate"** includes any person under the control of, in common control with, or in control of the party, whether that control is direct or indirect. "Control," means the ability, directly or indirectly, to direct the management or policies of the controlled entity or individual. The ability to exercise more than fifty percent (50%) of the voting rights of an entity is presumptively control.

   b) **"Associates"** are the parties' officers, directors, owners, shareholders, partners, limited partners, members, managers, joint venture participants, Affiliates, trustees, consultants, representatives, elected and appointed officials of Licensee, employees, agents, attorneys, independent contractors, spouses, other relatives, and other persons and entities working for or with them.

   c) **"Documentation"** means user manuals and other written material created by Licensor to describe the functionality or assist in the use of the Software. A list of the Documentation provided with the Software is set forth in Exhibit A to this Agreement.

   d) **"Document"** or **"Documents"** means a writing, as defined in Evidence Code §250, and includes the original or a copy of handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds or symbols, or combinations of them, including, without limitation, computer records and data of every kind or nature, audio and video tapes of every kind or nature and microfilm or microfiche.

   e) **"Licensee"** means the City of Long Beach and includes Associates of Licensee using the Software in the performance of their duties for Licensee.

f)   **"License Fee"** means the fee to be paid by Licensee to Licensor as consideration for the license granted under this Agreement and the right to use the Software. The License Fee is set forth in Exhibit A to this Agreement.

g)   **"Licensor"** means Nobel Systems, Inc.

h)   **"Software"** means the computer program or programs marketed and sold as GeoViewer Online, in object code form only, and the Documentation. Software includes any updates, modification, bug fixes, updates, enhancements, or other modifications. It does not include any version of the Software that constitutes a separate product because of differences in function or features.

i)   **"Technical Support Schedule"** means the description of the technical support and maintenance provided by Licensor in connection with Licensee's use of the Software, and a schedule of the fees charged by Licensor for such support and maintenance. The Technical Support Schedule is set forth in Exhibit B to this Agreement.

2. GRANT OF LICENSE.

a)   **Grant.** Subject to the terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee a nonexclusive, nontransferable license in the Software, to use the Software exclusively for viewing GIS data and other associated data sets.

b)   **License Restrictions.** Except as specifically granted in this Agreement, Licensor owns and retains all right, title, and interest in the Software, Documentation, and any and all related materials. This Agreement does not transfer ownership rights of any description in the Software, Documentation, or any related materials to Licensee or any third party. Licensee shall reproduce, install, and render the Software operational only on the ArcIMS server at the City of Long Beach. Licensee shall not modify, reverse engineer, or decompile the Software, or create derivative works based on the Software. Licensee may not sell, distribute or transfer the Software or copies of the Software to any person or make any other commercial use of the Software. Licensee shall not copy the Software or Documentation except as necessary to use the Software on the ArcIMS server at the City of Long Beach. Licensee shall retain all copyright and trademark notices on the Software and Documentation.

3. LICENSE FEES.

a)   **License Fees.** In consideration for the License granted to Licensee under this Agreement, Licensee shall pay Licensor the License Fee, as set forth on the License Fee Schedule, attached as Exhibit A to this Agreement. All amounts not paid within ten (10) days after the written notice of delinquency shall bear interest at ten percent (10%) per year. In addition, Licensee shall pay a late fee of ten percent (10%) of any payments not paid to Licensor within ten (10) days after the written notice of delinquency. Licensee agrees the late fee represents a reasonable estimate of the damages Licensor will suffer if Licensee does not pay on time.

b)   **Taxes.** In addition to other amounts payable under this Agreement, Licensee shall pay any and all federal, state, municipal, or other taxes, duties, fees, or withholding currently or

subsequently imposed on Licensee's use of the Software or the payment of the License Fee to Licensor, other than taxes assessed against Licensor's net income. Such taxes, duties, fees, withholding, or other charges shall be paid by Licensee or Licensee shall provide the appropriate authority with evidence of exemption from such tax, duty, fee, withholding, or charge. If Licensor is required to pay any such tax, duty, fee, or charge, or to withhold any amount from monies due to Licensor from Licensee pursuant to this Agreement, Licensee shall promptly reimburse Licensor any such amounts.

4. LICENSOR'S OBLIGATIONS.

a) **Deliverables**. Upon execution of this Agreement, Licensor shall deliver the Software to Licensee in a format appropriate for the ArcIMS server at the City of Long Beach.

b) **Support and Maintenance**. Licensor shall provide Licensee with technical support in connection with Licensee's use of the Software according to the Technical Support Schedule attached as Exhibit C to this Agreement. Licensor shall provide Licensee with all modifications, bug fixes, and updates for the Software as part of this support and maintenance obligation for one year after delivery of the Software. However, Licensor has no obligation to provide Licensee with subsequent product releases. After the first year, Licensee may extend the Support and Maintenance by giving written notice to Licensor before the support and maintenance period expires and paying the fee set forth in Schedule C. Licensee may so extend the Support and Maintenance for up to 5 years after the initial year.

5. TERM AND TERMINATION.

a) **Term.** This Agreement, and the license granted under this Agreement, becomes effective on the date set forth in Section 10(s) below. Unless sooner terminated as set forth in Sections 5(b) and 5(c), below, the Agreement shall continue in effect until the expiration of Licensor's rights in the Software.

b) **Termination for Convenience.** After one year following the Effective Date, Licensee may terminate the Agreement on thirty (30) days prior written notice to Licensor.

c) **Termination for Cause.** Either party, as applicable, shall have the right, in addition, and without prejudice to any other rights or remedies, to terminate this Agreement as follows:

   i) by Licensor, upon fifteen (15) days' written notice, if Licensee fails to pay within ten (10) days after written notice of delinquency the amounts due to Licensor pursuant to this Agreement;

   ii) by Licensor, upon fifteen (15) days' written notice, if there is a change in control of Licensee, whether by sale of assets, stock, or otherwise;

   iii) by either party for any material breach of this Agreement, other than failure to make payments under Section 3, that is not cured within ten (10) days of receipt by the party in default of a notice specifying the breach and requiring its cure; or

iv) by either party, immediately upon written notice, if: (a) all or a substantial portion of the assets of the other party are transferred to an assignee for the benefit of creditors, to a receiver, or to a trustee in bankruptcy; (b) a proceeding is commenced by or against the other party for relief under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days; or (c) the other party is adjudged bankrupt.

d) **Rights on Termination.** Licensor has and reserves all rights and remedies that it has by operation of law or otherwise to enjoin the unlawful or unauthorized use of Software or Documentation. On termination all rights granted to Licensee under this Agreement cease and Licensee will promptly cease all use the Software and Documentation, Licensee will promptly return all copies of the Software to Licensor or destroy all of Licensee's copies of the Software, and return to Licensor or destroy all Documents containing any confidential information of Licensor as defined in Section 8(a), and certify to Licensor in writing within fourteen (14) days of termination that Licensee complied with these obligations. Licensor may inspect the Licensee's computer systems to verify compliance with this section. Sections 2(b), 6, 7, and 8 will survive termination or expiration of this Agreement as will any cause of action or claim of either party, whether in law or in equity, arising out of any breach or default.

6. WARRANTIES, DISCLAIMER, AND LIMITATIONS.

a) **Warranties.** Licensor hereby warrants to Licensee that: (a) Licensor is the owner of the Software and the Documentation or has the right to grant to Licensee the license to use the Software and Documentation in the manner and for the purposes set forth in this Agreement without violating any rights of a third party; and (b) the media containing the Software will be free from defects for a period of one (1) year from the date of delivery to Licensee, provided that this warranty does not cover defects in the media due to Licensee's misuse of the Software media or an accident subsequent to delivery to Licensee.

b) **Disclaimer.** The warranties set forth in Section 6(a), above, are in lieu of, and this Agreement expressly excludes, all other warranties, express or implied, oral or written, including, without limitation: (a) any warranty that the Software is error-free, will operate without interruption, or is compatible with all equipment and software configurations; (b) any and all implied warranties of merchantability; and (c) any and all warranties of fitness for a particular purpose.

c) **Remedies on Breach of Warranty.** In the event of any breach of the warranty set forth in Section 6(a), Licensee's exclusive remedy shall be for Licensor to promptly replace defective Software media; if Licensor is unable to replace the media within thirty (30) days of notification by Licensee of a defect, Licensee's sole remedy is to terminate this Agreement, at which time Licensor will refund any and all license or other fees paid by Licensee pursuant to this Agreement.

d) **Limitation of Liability.** Licensor is not liable for any indirect, incidental, special, or consequential damages, including the loss of profits, revenue, data, or use or cost of procurement of substitute goods incurred by Licensee or any third party, whether in an action

in contract or tort or based on a warranty, even if Licensor or any other person has been advised of the possibility of such damages. Licensor's liability for damages under this agreement shall not exceed the amounts actually paid by Licensee to Licensor under this Agreement.

e) **Limitations Period.** No action arising out of or in connection with this Agreement or the transactions contemplated by the Agreement may be brought by either party against the other more than one year after the action accrues.

7. INDEMNITY.

a) **Infringement Indemnity.** Licensor indemnifies, defends, and holds Licensee harmless from and against any claims, actions, or demands alleging that the Software infringes any United States patent, United States copyright, or other United States intellectual property right of a third party. If use of the Software is permanently enjoined for any reason, Licensor, at Licensor's option, and in its sole discretion, may: (a) modify the Software so as to avoid infringement; (b) procure the right for Licensee to continue to use and reproduce the Software and Documentation; or (c) terminate this Agreement and refund to Licensee all license fees paid. Licensor shall have no obligation under this Section 7(a) for or with respect to claims, actions, or demands alleging infringement that arise as a result of (a) the combination of noninfringing items supplied by Licensor with any items not supplied by Licensor; (b) modification of the Software or Documentation by Licensee or by Licensor in compliance with Licensee's designs, specifications, or instructions; (c) the direct or contributory infringement of any process patent by Licensee through the use of the Software; and (d) continued allegedly infringing activity by Licensee after Licensee has been notified of the possible infringement.

b) **Other Indemnity.** Licensee is responsible and indemnifies and holds Licensor harmless for any and all losses, liability, or damages arising out of, or incurred in connection with, Licensee's use or reproduction of the Software pursuant to this Agreement. The warranties and representations in this Agreement survive execution and termination of this Agreement. The parties shall indemnify and hold each other free and harmless from any and all costs, debts, obligations, liabilities, damages (including attorney fees) arising out of their respective failure to perform this Agreement, and/or arising out of the falsity or breach of any of their respective warranties and representations in this Agreement.

c) **Condition to Indemnification.** Should any claim subject to indemnity be made against Licensor or Licensee, the party against whom the claim is made agrees to provide the other party with prompt written notice of the claim. Licensor will control the defense and settlement of any claim under Section 7(a), and Licensee will control the defense and settlement of any claim under Section 7(b). The indemnified party agrees to cooperate with the indemnifying party and provide reasonable assistance in the defense and settlement of such claim. The indemnifying party is not responsible for any costs incurred or compromise made by the indemnified party unless the indemnifying party has given prior written consent to the cost or compromise.

8. CONFIDENTIALITY.

a) **Confidentiality.** Licensee acknowledges that the Software and Documentation, and all information relating to the Software, the Documentation and/or to Licensor's business and operations that Licensee learns or has learned during or prior to the term of this Agreement, are be the valuable, confidential, and proprietary information and trade secrets of Licensor. During the period this Agreement is in effect, and at all times afterwards, Licensee, and its employees, contractors, consultants, and agents, will: (a) safeguard the confidential information with the same degree of care that it uses to protect its own confidential information; (b) maintain the confidentiality of this information; (c) not use the information except as permitted under this Agreement; and (d) not disseminate, disclose, sell, publish, or otherwise make available the information to any third party without the prior written consent of Licensor.

b) **Limitations on Confidentiality Restrictions.** Section 8(a) does not apply to any information that: (a) is already lawfully in the receiving party's possession (unless received pursuant to a nondisclosure agreement); (b) is or becomes generally available to the public through no fault of the receiving party; (c) is disclosed to the receiving party by a third party who may transfer or disclose such information without restriction; (d) is required to be disclosed by the receiving party as a matter of law (provided that the receiving party will use all reasonable efforts to provide the disclosing party with prior notice of such disclosure and to obtain a protective order therefor); (e) is disclosed by the receiving party with the disclosing party's approval; and (f) is independently developed by the receiving party without any use of confidential information. In all cases, the receiving party will use all reasonable efforts to give the disclosing party ten (10) days' prior written notice of any disclosure of information under this Agreement. The parties will maintain the confidentiality of all confidential and proprietary information learned pursuant to this Agreement for a period of five (5) years from the date of termination of this Agreement.

9. EXPORT CONTROLS AND RESTRICTED RIGHTS.

a) **Export Controls.** The Software, the Documentation, and all underlying information or technology may not be exported or re-exported into any country to which the U.S. has embargoed goods, or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. Licensee shall not export the Software or Documentation or any underlying information or technology to any facility in violation of these or other applicable laws and regulations. Licensee represents and warrants that it is not a national or resident of, or located in or under the control of, any country subject to such export controls.

b) **Restricted Rights.** The Software and Documentation are provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1) of the Commercial Computer Software - Restricted Rights clause at FAR 52.227-19, subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraph (d) of the Commercial Computer Software—Licensing at NASA FAR supplement 16-52.227-86, or their equivalent, as applicable.

10. MISCELLANEOUS TERMS.

a) **Complete Agreement.** This Agreement is integrated. It constitutes the entire agreement and understanding between the parties relating to the Software and Documentation, and all prior and contemporaneous negotiations, agreements and understandings, whether oral or written, are merged herein and superseded by said Agreements. This Agreement supersedes all prior agreements between the parties. The parties warrant and represent they are not relying on any terms, conditions, covenants, promises, warranties or representations not contained in this Agreement. Any such terms, conditions, covenants, promises, warranties representations not contained in said Agreement shall be of no further force or effect.

b) **Modification And Amendment.** This Agreement may be modified only by a further written agreement signed by the parties. Language or terms in purchase orders, invoices or similar Documents do not modify this Agreement unless both parties agree in writing to such language or terms.

c) **Good Faith And Cooperation.** The Parties shall cooperate and work diligently together in good faith to accomplish the purposes of this Agreement. This includes, without limitation, promptly executing any Documents reasonably requested by the other party to effect this Agreement.

d) **Time Is Of The Essence.** Time is of the essence in performing this Agreement.

e) **No Third Party Rights.** No Person other than the parties to this Agreement shall have any rights under this Agreement. There are no third party beneficiaries under this Agreement.

f) **Force Majeure.** Either party will be excused from delays in performing or from failing to perform its obligations under this Agreement to the extent the delays or failures result from causes beyond the reasonable control of the party. However, to be excused from delay or failure to perform, the party must act diligently to remedy the cause of the delay or failure.

g) **Attorney Fees.** If any legal action is brought to enforce or interpret this Agreement, or arises out of this Agreement, the Software and/or the Documentation, the prevailing party may recover reasonable attorney fees and expert fees, in addition to any other relief to which it may be entitled. The parties shall also be entitled recover reasonable attorney fees incurred as a result of the other party breaching this Agreement, which breach does not result in litigation.

h) **Choice of Law.** This Agreement shall be construed under and governed by United States and California law.

i) **Irreparable Injury/Injunctive Relief.** If either party breaches any terms other than to pay money including, without limitation, terms re: confidentiality and/or return of the Software and other items on termination of the Agreement, the other party will suffer great and irreparable injury for which monetary compensation will not afford adequate relief and/or the amount of monetary compensation that will afford adequate relief will be extremely difficult to ascertain. If either party beaches any terms other than to pay money

including, without limitation, terms re: confidentiality and/or return of the Software and other items on termination of the Agreement, the other party will be entitled to injunctive relief through a TRO, preliminary injunction, prejudgment writ of possession, and permanent injunction, in addition to any other relief to which it may be entitled. The parties waive any requirement for a bond or undertaking to obtain a TRO, preliminary injunction, or a prejudgment writ of possession. If the Court nevertheless imposes a bond or undertaking, the parties agree it shall be the minimum possible amount.

j) **Conduct of Associates.** Each party will prevent any acts or omissions by its respective Associates which acts or omissions would breach this Agreement if committed by that party. For officers, directors, owners, shareholders, partners, elected or appointed officials of Licensee, employees and agents, the requirement is absolute; for the other categories within the meaning of Associates, each party must use reasonable and diligent efforts to prevent the violations.

k) **Waiver.** Any express or implied waiver of a breach of any term of this Agreement shall not constitute a waiver of any further breach of the same or other term of this Agreement. Any forbearance in exercising a right or remedy for a breach of this Agreement shall not be deemed a waiver of such rights or remedies, unless that waiver is express and in writing. Failure of either party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement, or to take advantage of any of its rights, shall not be construed as a waiver of any such provisions or rights or a relinquishment of any rights or remedies for the future.

l) **Severability.** If any term of this Agreement is found to be invalid or unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect. In addition, the term found to be invalid or unenforceable shall be construed to be valid and enforceable to the maximum extent permitted by law.

m) **Notices.** Any notice required or permitted to be given under this Agreement shall be deemed given two business days after being mailed certified mail, return receipt requested to the parties' designated addresses, whether or not the notice is received by the recipient, whether or not anyone signs the return receipt, and whether or not the return receipt is returned by the Post Office. In addition to mailing notice, the parties will attempt to fax the notice if a fax number is provided and e-mail the notice if an e-mail address is provided. Any party may change its address for giving notice by giving written notice of the change to the other parties. Other means of giving written notice that result in actual notice are permissible.

    i) Licensee's address is 2400 Spring Street, Long Beach, CA 90806, FAX (562) 570-2155.

    ii) Licensor's address is 1845 Business Center Drive, Suite 130, San Bernardino, CA 92408, Fax: 909-382-0163 with copy to Gregory W. Brittain, 330 North "D" Street, Suite 300, San Bernardino, CA 92401, Fax: 909-889-0544.

n) **Interpretation.** In construing this Agreement, masculine, feminine and neuter pronouns shall be substituted for the other forms and plural terms shall be substituted for singular and vice versa, any place the context so requires.

o) **Careful Reading and Understanding.** The parties warrant, represent and agree they carefully read and understand all of the provisions of this Agreement and they voluntarily execute same with full knowledge of their legal significance, and with the intent to be legally bound by their terms. This Agreement shall be deemed to have been drafted equally by all parties. In interpreting same, no preference or presumption shall arise in favor or of, or against, any party.

p) **Discrimination.** Subject to applicable laws, rules, and regulations, Licensor shall not discriminate against any person or group on the basis of age, gender, sexual orientation, HIV status, marital status, race, religion, creed, ancestry, national origin, disability, or handicap with respect to the performance of its obligations under this Agreement. In the performance of this Agreement, Licensor shall not discriminate against any employee or applicant for employment on the base of race, color, sex, religion, ancestry, or national origin.

q) **Heirs and Successors.** This Agreement shall be binding upon the heirs, successors, and assigns of the parties hereto. This paragraph does not grant the right to assign this Agreement or any rights thereunder. That is governed elsewhere in this Agreement.

r) **Authority to Sign This Agreement.** Licensor and Licensee and the individuals executing this Agreement for them warrant and represent such persons have authority to do so.

s) **Section Headings.** The section headings of this Agreement are for convenience only and shall not be deemed to modify, explain, restrict, alter or affect the meaning or interpretation of any provision hereof.

t) **When Effective and Enforceable.** This Agreement shall become effective and enforceable when it is executed by all parties ("Effective Date"), and _____. This Agreement may be executed in counterparts, including fax copies.

Signatures follow…

NOBEL SYSTEMS, INC.

Dated: __June 27_, 2006

_____
Michael Samuel, President

City of Long Beach

Dated: *August 4*, 2006

Christine S. Shipper

Gerald R. Miller, City Manager

APPROVED AS TO FORM

_____ 8/3, 2006

ROBERT E. SHANNON, City Attorney

By _____
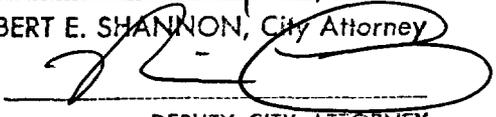
DEPUTY CITY ATTORNEY

NOBEL SYSTEMS, INC.

SOFTWARE LICENSE AGREEMENT

Exhibit A

Documentation

NOBEL SYSTEMS, INC.

SOFTWARE LICENSE AGREEMENT

Exhibit B

Nobel Systems will provide 1 copy of its GeoViewer Online web based GIS viewing application and 1 copy of Servlet EXE, 2 CPU with upgrades. The City must provide ArcIMS, ArcSDE, Windows Server 2003, and Oracle DB.

Total Cost..$21,100.00

NOBEL SYSTEMS, INC.

SOFTWARE LICENSE AGREEMENT

Exhibit C

Technical Support

Nobel Systems Software License Agreement.