


DATE SUBMITTED 9/1/2023
 SUBMITTED BY R. Alejandro Estrada
 DATE ACTION REQUIRED 9/06/2023

COUNCIL ACTION (x)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: 1. DATA SERVICES AGREEMENT BETWEEN THE CITY OF IMPERIAL AND COUNTY OF IMPERIAL.	
DEPARTMENT INVOLVED: INFORMATION TECHNOLOGY	
BACKGROUND/SUMMARY: The California Government Code Section 6502, et seq. authorizes public entities, including cities, counties, special districts and joint agencies to enter into agreements. As part of the Data Service Agreement, the County of Imperial along with nine other entities have a mutual interest in maintaining accurate, electronically- retrievable geographic information. As such, the attached agreement provides a shared cost for such services to regional citizens. Improving effectiveness and efficiency of local and regional government and enhancing economic competitiveness.	
FISCAL IMPACT: NOT TO EXCEED Web Hosting Agreement (Geo Viewer) \$3,169.21 Annual Fee Five year contract July 01, 2023 through June 30, 2028 Imperial County Data Service Data Agreement \$218.31 Annual Fee Five year contract July 01, 2023 through June 30, 2028	FINANCE INITIALS _____ 
STAFF RECOMMENDATION: It is staff's recommendation to approve the data service agreement between the City of Imperial and the County of Imperial.	DEPT. INITIALS _____
MANAGER'S RECOMMENDATION:	CITY MANAGER'S INITIALS _____
MOTION: SECONDED: _____ APPROVED () REJECTED () AYES: _____ DISAPPROVED () DEFERRED () NAYES: _____ ABSENT: _____ REFERRED TO: _____	

ROBERT MENVIELLE
ASSESSOR

JACK DUNNAM
ASSISTANT ASSESSOR

IMPERIAL COUNTY ASSESSOR



940 W. MAIN ST., SUITE 115
EL CENTRO, CA 92243-2874
TEL: (442) 265-1300
FAX: (442) 265-8030
www.co.imperial.ca.us/Assessor

July 31, 2023

Mr. Alejandro Estrada
City of Imperial
420 South Imperial Ave.
Imperial, CA 92251

RE: Web Hosting Agreement (GeoViewer)
Imperial County Data Service Agreement

Dear Mr. Estrada,

Enclosed please find the 2023-2028 agreement and current fee schedule, please sign and return the agreements to the Imperial County Assessor.

Payments for Nobel Systems (blue column) should be paid directly to Nobel, payments to Imperial County (yellow column) should be payable to Imperial County Assessor.

As a friendly reminder, the use of GeoViewer and GIS Data is for official government use only, and should not be shared with the public or private businesses without prior written authorization.

Thank you for your continued support. If you have questions or need additional information, please call (442) 265-8609.

Respectfully,

A handwritten signature in blue ink, appearing to read "Jack R. Dunnam", is written over a circular stamp or seal.

Jack R. Dunnam
Imperial County Assistant Assessor

Enclosures:

1. Web Host Agreement to be signed (Nobel).
2. Imperial County Data Service Agreement to be signed (County).
3. Data service cost (Exhibit "A").
4. 2023-2024 County invoice.

JD/ma

1 **AGREEMENT**

2 THIS AGREEMENT, hereinafter "AGREEMENT," is made and entered into this
3 _____ 2023, by and between the COUNTY OF IMPERIAL, a political
4 subdivision of the State of California, hereinafter referred to as "COUNTY", and CITY OF EL
5 CENTRO, CITY OF BRAWLEY, CITY OF IMPERIAL, CITY OF WESTMORLAND, CITY
6 OF CALIPATRIA, CITY OF HOLTVILLE, CITY OF CALEXICO, IMPERIAL IRRIGATION
7 DISTRICT, HEBER PUBLIC UTILITY DISTRICT, and STATE OF CALIFORNIA,
8 DEPARTMENT OF TRANSPORTATION ("CALTRANS"), individually and collectively
9 referred to as "MEMBER" and "MEMBERS" respectively, and NOBEL SYSTEMS, INC., an
10 active California Corporation, hereinafter referred to as "CONSULTANT".
11

12 **WITNESSETH**

13
14 WHEREAS, COUNTY's Assessor requires the services of a CONSULTANT to perform web
15 hosting services in connection with the Imperial County Geographic Information System
16 ("ICGIS") for itself and the MEMBERS; and
17

18 WHEREAS, COUNTY is authorized to enter into this AGREEMENT under the provisions of
19 California Government Code Section 31000; and

20 WHEREAS, COUNTY is desirous of engaging CONSULTANT for the performance of said
21 services as are provided for herein and CONSULTANT is willing to accept such engagement.
22

23 NOW, THEREFORE, COUNTY hereby engages and CONSULTANT hereby accepts
24 upon the terms and conditions set forth herein.

25 1. PARTIES TO AGREEMENT

26 1.1. This AGREEMENT is by and between COUNTY, MEMBERS and CONSULTANT.
27
28

1 1.2. It is not the intent of the parties to this AGREEMENT to create, and nothing in this
2 AGREEMENT shall be construed as creating a joint venture or partnership or any other
3 relationship between the parties. Neither the COUNTY, the MEMBERS, nor CONSULTANT
4 authorizes the others to act as its agent or representative.
5

6 2. WORK TO BE PERFORMED BY CONSULTANT

7 2.1. CONSULTANT shall perform and be responsible for providing the services described in
8 Exhibit "B" which is attached hereto and incorporated by reference as though fully set forth herein.

9 2.2. Said work shall be completed in a lawful, professional, expeditious and timely manner.

10 2.3. CONSULTANT understands that all data supplied by COUNTY or MEMBERS and
11 hosted by CONSULTANT shall be maintained on the COUNTY GIS Server (ICGIS)
12 CONSULTANT shall upload or link to ICGIS to host data. Further if CONSULTANT contracts
13 with COUNTY or MEMBER for additional services which involve loading data or layers to the
14 system (data or layers available for view by all MEMBERS and COUNTY only) such input shall
15 also be loaded to ICGIS. Layers or data solely for use by an individual MEMBER or COUNTY
16 and not intended to be shared with any other MEMBER or COUNTY in any way, is not required
17 to be maintained on ICGIS.
18
19

20 3. TERM OF AGREEMENT

21 This AGREEMENT shall become effective on July 1, 2023 and remain in effect until June 30,
22 2028.
23

24 4. COMPENSATION

25 4.1. CONSULTANT'S compensation for the services is required to be performed under this
26 AGREEMENT shall not exceed Forty Four Thousand Dollars (\$49,280.00) per year. MEMBERS
27 and COUNTY shall contribute in the following amounts:
28

Member:	Data Host Cost:
City of El Centro	\$ 6,051.94
City of Calexico	4,896.88
City of Holtville	854.72
City of Brawley	4,319.35
City of Imperial	3,169.21
City of Calipatria	682.19
City of Westmorland	383.06
Imperial Irrigation District	8,134.47
CalTrans	8,134.47
Imperial County	10,845.47
Heber Public Utility District	900.66
Total	\$49,280.00

18 A more detailed description is included in the column identified as "NOBEL - Data Host Cost"
19 and the ancillary textual explanation appearing in the attached Exhibit "A", incorporated by this
20 reference as though fully set forth herein.

21 4.2. The members listed in 4.1 are governmental entities that will have access to the ICGIS data
22 upon payment of the web-hosting fee to the County of Imperial, Office of the County Assessor.
23 Each member shall pay the COUNTY Assessor the required fee within thirty (30) days of invoice.

24 ALL MEMBERS understand that each fee must be paid prior to being able to access the
25 ICGIS data. The COUNTY shall contribute \$10,845.47 upon execution of this AGREEMENT by
26 COUNTY and CONSULTANT. If any MEMBER fails or refuses to pay its web-hosting fee
27

1 within the required thirty-day period, each of the other MEMBERS shall pay the fee on a
2 proportional basis in the same fashion as the original fee amount was calculated. However,
3 COUNTY'S contribution remains and shall not exceed \$10,845.47 and COUNTY is not obligated
4 to pay any MEMBER'S fee, proportionally, wholly, or in any other way.
5

6 4.3. CONSULTANT acknowledges and agrees that COUNTY'S total obligation pursuant to
7 this agreement shall not exceed \$10,845.47.

8 4.4. CONSULTANT acknowledges COUNTY is under no obligation to compensate
9 CONSULTANT for services rendered under this AGREEMENT not authorized by COUNTY.
10

11 4.5. If COUNTY requires work in addition to that defined in the Scope of Work,
12 CONSULTANT shall provide a cost estimate and written description of the additional work
13 needed to perform such services. Compensation and the time for completion of such additional
14 services must be negotiated and approved in writing by the COUNTY prior to the commencement
15 of any such services.

16 5. REPRESENTATIONS BY CONSULTANT

17 5.1. CONSULTANT understands and agrees that COUNTY is relying upon CONSULTANT'S
18 representations that it will provide services provided herein to the standard of care ordinarily
19 exercised in CONSULTANT'S profession.
20

21 5.2. CONSULTANT represents and warrants that it is a lawful entity possessing all required
22 licenses and authorities to do business in the State of California and perform all aspects of this
23 AGREEMENT.
24

25 5.3. CONSULTANT represents and warrants that the people executing this AGREEMENT on
26 behalf of CONSULTANT has the authority of CONSULTANT to sign this AGREEMENT and
27

1 bind CONSULTANT to the performance of all duties and obligations assumed by CONSULTANT
2 herein.

3 5.4. CONSULTANT represents and warrants that any employee, contractor and agent who will
4 be performing any of the duties and obligations of CONSULTANT herein possess all required
5 licenses and authorities, as well as the experience and training, to perform such tasks.
6

7 5.5. CONSULTANT represents and warrants that the subject services shall be performed
8 exclusively by CONSULTANT. Any agreements to the contrary must be consented to in writing
9 by COUNTY.
10

11 5.6. CONSULTANT represents that the services provided herein shall be performed in a
12 professional and lawful manner.

13 5.7. CONSULTANT represents and warrants that the allegations contained in Exhibit "B"
14 attached hereto are true and correct.

15 5.8. CONSULTANT understands that COUNTY considers the representations made herein to
16 be material and would not enter into this AGREEMENT with CONSULTANT if such
17 representations were not made.
18

19 5.9. CONSULTANT represents and warrants that all reports, analyses or other documents
20 developed under this AGREEMENT shall become the exclusive property of COUNTY and shall
21 not be distributed by CONSULTANT without COUNTY'S written consent.
22

23 5.10. CONSULTANT represents and warrants that any errors in its services provided shall be
24 corrected at no additional charge to COUNTY.

25 **6. RETENTION AND ACCESS OF BOOKS AND RECORDS**

26 6.1. CONSULTANT represents and warrants that it shall maintain books, records, documents,
27 reports and other materials developed under this AGREEMENT as follows:
28

1 6.1.1. CONSULTANT shall maintain all ledgers, books of accounts, invoices, vouchers, canceled
2 checks, and other records relating to CONSULTANT'S charges for services or expenditures and
3 disbursements charged to COUNTY for a minimum period of five (5) years, or for any longer
4 period required by law, from the date of final payment to CONSULTANT pursuant to this
5 AGREEMENT.
6

7 6.1.2. CONSULTANT shall maintain all reports, documents and records, which demonstrate
8 performance under this AGREEMENT for a minimum period of five (5) years, or for any longer
9 period required by law, from the date of termination or completion of this AGREEMENT.
10

11 6.1.3. Any records or documents required to be maintained by CONSULTANT pursuant to this
12 AGREEMENT shall be made available to COUNTY for inspection or audit, at any time during
13 CONSULTANT'S regular business hours provided COUNTY provides CONSULTANT with
14 seven (7) days advanced written or oral notice. Copies of such documents shall at no cost to
15 COUNTY, be provided to IMPERIAL COUNTY for inspection at CONSULTANT'S address
16 indicated for receipt of notices under this AGREEMENT.
17

18 6.2. CONSULTANT represents and warrants that it has not been engaged by, nor will it be
19 engaged by and owes no duty of performance to any other person or entity, which would constitute
20 a conflict. For breach or violation of this warranty COUNTY shall, amongst other remedies at
21 law, have the right to terminate this AGREEMENT without liability, or at its sole discretion, to
22 deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of
23 such fee, commission, percentage brokerage fee, gift or contingent fee paid or received from
24 another entity or person.
25

26 7. INDEMNIFICATION
27
28

1 CONSULTANT shall defend, indemnify and hold harmless COUNTY and, MEMBERS
2 from any and all claims, damages or loss arising out of the performance by CONSULTANT, its
3 agents or employees of this AGREEMENT, including the active or passive negligence of
4 CONSULTANT, its agents or employees, or any obligation imposed thereby, or any act of or
5 failure to act by CONSULTANT.
6

7 8. INDEPENDENT CONTRACTOR

8 8.1. In all situations and circumstances arising out of the terms and conditions of the
9 AGREEMENT, CONSULTANT is an independent contractor, and as an independent contractor,
10 the following shall apply:
11

12 8.2. CONSULTANT is not an employee of COUNTY and is only responsible for the
13 requirements and results specified by this AGREEMENT or any other agreement.

14 8.3. CONSULTANT shall be responsible to COUNTY only for the requirements and
15 results specified by this AGREEMENT and except as specifically provided in this AGREEMENT,
16 shall not be subject to COUNTY'S control with respect to the physical actions or activities of
17 CONSULTANT in fulfillment of the requirements of this AGREEMENT.

18 8.4. CONSULTANT is not, and shall not be, entitled to receive from, or through, COUNTY,
19 and COUNTY shall not provide, or be obligated to provide, CONSULTANT with Worker's
20 Compensation coverage or any other type of employment or worker insurance or benefit coverage
21 required or provided by any Federal, State or local law or regulation for, or normally afforded to,
22 an employee of COUNTY.
23

24 8.5. CONSULTANT shall not be entitled to have COUNTY withhold or pay, and COUNTY
25 shall not withhold or pay, on behalf of CONSULTANT, any tax or money relating to the Social
26 Security Old Age Pension Program, Social Security Disability Program, or any other type of
27

1 pension, annuity, or disability program required or provided by any Federal, State, or local law or
2 regulation.

3 8.6. CONSULTANT shall not be entitled to participate in, or receive any benefit from, or make
4 any claim against any COUNTY fringe benefit program, including, but not limited to, COUNTY'S
5 pension plan, medical and health care plan, dental and eye care plan, life insurance plan, or any
6 other type of benefit program, plan, or coverage designated for, provided to, or offered to
7 COUNTY'S employees.
8

9 8.7. COUNTY shall not withhold or pay, on behalf of CONSULTANT, any Federal, State, or
10 local tax, including, but not limited to, any personal income tax, owed by CONSULTANT.
11

12 8.8. CONSULTANT is, and at all times during the term of this AGREEMENT, shall represent
13 and conduct itself as an independent contractor, not as an employee of COUNTY.

14 8.9. CONSULTANT shall not have the authority, express or implied, to act on behalf of, bind
15 or obligate COUNTY in any way without the written consent of COUNTY.
16

17 9. INSURANCE REQUIREMENTS

18 9.1. CONSULTANT, hereby agrees at its sole cost and expense, to obtain and maintain in
19 full force during the entire term of this AGREEMENT and any extended term thereof the following
20 types of insurance:

21 9.1.1. Commercial General Liability coverage in the minimum amount of one million dollars
22 (\$1,000,000) combined single limit to any one person ("CSL") and two million dollars
23 (\$2,000,000) aggregate for any one accident, including personal injury, death and property
24 damage.
25

26 9.1.2. Automobile Liability coverage in a minimum amount of one million dollars (\$1,000,000)
27 for bodily injury and property damage including owned, non-owned and hired vehicles.
28

1 9.1.3. To the extent required by law, Workers' Compensation coverage, in full compliance with
2 California statutory requirements for all employees of CONSULTANT and Employer's Liability
3 in the minimum amount of one million dollars (\$1,000,000).

4
5 9.1.4. Professional Liability insurance in a minimum amount of one million dollars (\$1,000,000)
6 per claim and annual aggregate.

7 9.2. Special Insurance Requirements. All insurance required under paragraph 9 shall:

8 9.2.1. Be procured from an insurer authorized to do business in California.

9 9.2.2. Be primary coverage as respects COUNTY and any insurance or self insurance maintained
10 by COUNTY shall be in excess of CONSULTANT'S insurance coverage and shall not contribute
11 to it.

12
13 9.2.3. Name COUNTY as an additional insured on all policies and provides that COUNTY may
14 recover for any loss suffered by COUNTY by reason of CONSULTANT'S negligence.

15 9.2.4. Not be canceled, non-renewed or reduced in scope of coverage until after thirty (30) days
16 written notice has been given to the COUNTY. However, CONSULTANT may not terminate
17 such coverage until it provides COUNTY with proof that equal or better insurance has been
18 secured and is in place. Cancellation or change without the prior written consent of the COUNTY
19 shall, at the option of the COUNTY, be grounds for termination of this AGREEMENT.
20

21 9.3. Additional Insurance Requirements.

22 9.3.1. COUNTY is to be notified immediately of all insurance claims. COUNTY is also to be
23 notified if any aggregate insurance limit is exceeded.

24
25 9.3.2. Deposit of Insurance Policy. Promptly on issuance, reissuance, or renewal of any insurance
26 policy required by this AGREEMENT, the CONSULTANT shall, if requested by COUNTY,
27 cause to be given to COUNTY satisfactory evidence that insurance policy premiums have been
28

1 paid together with a duplicate copy of the policy or a certificate evidencing the policy and executed
2 by the insurance company issuing the policy or its authorized agent.

3 9.3.3. CONSULTANT agrees to provide COUNTY with the following insurance documents
4 on or before the effective date of this AGREEMENT:
5

6 9.3.3.1. Complete copies of certificates of insurance for all required coverages including
7 Additional Insured Endorsements and 30 days' Notice of Cancellation Clause endorsements.

8 9.3.3.2. The documents enumerated in Paragraph 9 shall be sent to the following:

9 County of Imperial
10 Risk Management Department
11 940 Main Street, Ste. 101
12 El Centro, CA 92243

13 And

14 Imperial County Assessor
15 Attention: Assessor
16 940 Main Street, Suite 115
17 El Centro, CA 92243

18 9.3.4. Nothing in this, or any other provision of this AGREEMENT, shall be construed to
19 preclude the CONSULTANT from obtaining and maintaining any additional insurance policies in
20 addition to those required pursuant to this AGREEMENT.

21 9.3.5. The comprehensive or commercial general liability shall contain a provision of
22 endorsements stating that such insurance:

- 23 i. Includes contractual liability.
- 24 ii. Does not contain a "pro rata" provision which looks to limit the insurer's
25 liability to the total proportion that its policy limits bear to the total coverage
26 available to the insured.
27

1 iii. Does not contain an "excess only" clause, which requires the
2 exhaustion of other insurance prior to providing coverage.

3 iv. Does not contain an "escape clause" which extinguishes the
4 insurer's liability if the loss is covered by other insurance.

5 v. Includes COUNTY as an additional insured.

6 vi. States that it is primary insurance and regards COUNTY as an additional
7 insured and contains a cross-liability or severability of interest clause.
8

9
10 10. DEFAULT, TERMINATION and WITHDRAWAL.

11 10.1. Consultant's Default. If CONSULTANT fails or refuses to perform any provision,
12 covenant, or condition to be kept or performed by CONSULTANT under this AGREEMENT,
13 including those in Exhibit "B" under this AGREEMENT, COUNTY, prior to exercising any of its
14 rights or remedies, shall give written notice to CONSULTANT of such default, specifying in
15 said notice the nature of such default and CONSULTANT shall have thirty (30) days from receipt
16 of such notice to cure said default. If such default is not cured within said thirty (30) day period,
17 then COUNTY may in its sole discretion terminate this AGREEMENT and/or pursue those
18 remedies available under the law at the time this AGREEMENT is executed as well as any future
19 remedies that are created.
20

21 10.2. County's Default. If COUNTY fails or refuses to perform any provision, covenant or
22 condition to be kept or performed by COUNTY under this AGREEMENT, CONSULTANT, prior
23 to exercising any of its rights or remedies, shall give written notice to COUNTY of such default,
24 specifying in said notice the nature of such default and COUNTY shall have thirty (30) days from
25 receipt of such notice to cure said default. If such default is not cured within said thirty (30) day
26 period, then CONSULTANT may in its sole discretion terminate this AGREEMENT and/or
27
28

1 pursue those remedies available under the law at the time this AGREEMENT is executed as well
2 as any future remedies that are created.

3 10.3. Termination Clause. Notwithstanding Paragraph 10.1, this AGREEMENT is subject to
4 termination by COUNTY as to CONSULTANT without cause by COUNTY upon thirty (30) days
5 prior written notice. In the event of termination, CONSULTANT shall return any fees received
6 but unearned, proportionally, within thirty (30) days of the date of termination.
7

8 10.4. MEMBERS may withdraw from this AGREEMENT by giving all other parties to this
9 AGREEMENT thirty (30) days prior written notice. In the event of withdrawal, MEMBERS
10 forfeit any fees paid.
11

12 11. ASSIGNMENTS AND SUBCONTRACTS.

13 11.1. Neither this AGREEMENT nor any rights, duties or obligations hereunder shall be
14 assignable and/or subcontracted by CONSULTANT without the prior written consent of
15 COUNTY.
16

17 11.2. COUNTY may demand such assurances, including financial assurances, modification of
18 this AGREEMENT, or such other requirements as, in its sole discretion, it deems advisable, as a
19 condition to granting its consent to any assignee or subcontractor hereunder. Nothing herein shall
20 be construed as requiring COUNTY to grant such approval if COUNTY, in its sole opinion, deems
21 such grant of consent to be not in the best interests of COUNTY.
22

23 11.3. Consent by COUNTY to an assignment or subcontract shall not release CONSULTANT
24 from its primary liability under this AGREEMENT, and COUNTY'S consent to one assignment
25 or subcontract, shall not be deemed a consent to other assignments and/or subcontracts.

26 11.4. Any attempt by the CONSULTANT to assign or otherwise transfer any interest in this
27 AGREEMENT without obtaining prior written consent of COUNTY shall be void.
28

1 12. BINDING

2 This AGREEMENT shall be binding upon the heirs, successors, assigns and subcontractors of the
3 Parties hereto.

4 13. NOTICES

5
6 13.1. Any notice by either party to the other shall be personally delivered to the party or sent by
7 certified mail, return receipt requested, to the addresses set forth below:

8 CONSULTANT:

COUNTY:

9
10 President
11 Nobel Systems, Inc.
12 436 E Vanderbilt Way
13 San Bernardino, CA 92408

Imperial County Assessor
940 Main Street, Suite 115
El Centro, CA 92243

14 MEMBERS:

15 City of El Centro
16 1275 W. Main St.
17 El Centro, CA 92243

City of Calipatria
125 N. Park Ave.
Calipatria, CA 92233

18 City of Holtville
19 121 W. 5th
20 Holtville, CA 92250

City of Westmorland
355 S. Center
Westmorland, CA 92281

21 City of Brawley
22 400 Main Street
23 Brawley, CA 92227

City of Imperial
420 S. Imperial Ave.
Imperial, CA 92251

24 City Manager
25 City of Calexico
26 608 Heber Ave.
27 Calexico, CA 92231

Imperial Irrigation District
P. O. Box 937
333 E. Barioni Blvd.
Imperial, CA 92251

28 State of California
Department of Transportation
District 11, MS-50
2829 Juan Street
San Diego, CA 92110

Heber Public Utility District
1078 Dogwood Road, Suite 103
P. O. Box H
Heber, CA 92249

1 13.2. Either party may change its address for notice by providing written notice to the other
2 parties in accordance with Paragraph 13.1. Notices shall be deemed effective on the date of
3 delivery.

4
5 14. ENTIRE AGREEMENT

6 This AGREEMENT contains the entire contract between COUNTY, MEMBERS and
7 CONSULTANT relating to the transactions contemplated hereby and supersedes all prior or
8 contemporaneous agreements, understandings, provisions, negotiations, representations, or
9 statements, either written or oral.

10
11 15. MODIFICATION

12 No modification, waiver, amendment, discharge, or change of this AGREEMENT shall be valid
13 unless the same is in writing and signed by all parties.

14
15 16. PARTIAL INVALIDITY

16 If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid,
17 void, or unenforceable, the remaining provisions will nevertheless continue in full force without
18 being impaired or invalidated in any way.

19
20 17. WAIVER

21 No waiver of any breach or of any of the covenants or conditions of this AGREEMENT shall be
22 construed to be a waiver of any other breach or to be consent to any further or succeeding breach
23 of the same or any other covenant or condition.

24
25 18. CHOICE OF LAW

26 This AGREEMENT shall be governed by the laws of the State of California. This AGREEMENT
27 is made and entered into in Imperial County, California. To the extent permitted by law, any action
28

1 brought by any party with respect to this AGREEMENT shall be brought in a court of competent
2 jurisdiction within said County.

3 **19. ATTORNEY'S FEES**

4 If a party herein brings an action to enforce the terms thereof or declare rights hereunder, the
5 prevailing party in any such action, on trial or appeal, shall be entitled to its reasonable attorney's
6 fees to be paid by the losing party as fixed by the court.
7

8 **20. AUTHORITY**

9 20.1. Each of the individuals executing this AGREEMENT on behalf of CONSULTANT,
10 COUNTY and MEMBERS represents and warrants that:

11 20.1.1. He or she is duly authorized to execute and deliver this AGREEMENT on behalf of
12 CONSULTANT, COUNTY or MEMBER as applicable;

13 20.1.2. Such execution and delivery on behalf of CONSULTANT is in accordance with the terms
14 of the Articles of Incorporation, By-Laws or Resolutions of CONSULTANT; and

15 20.1.3. Such execution and delivery on behalf of COUNTY is duly authorized by the Board of
16 Supervisors and within the authority of the signatory identified below.
17

18 20.1.4. MEMBERS warrant that the party executing this Agreement on behalf of MEMBER is
19 authorized to do so by MEMBER'S legislative or governing body, consistent with California Gov.
20 Code §6502.
21

22 **21. COUNTERPARTS**

23 This AGREEMENT may be executed in counterparts.
24

25 **22. REVIEW OF AGREEMENT TERMS**

26 This AGREEMENT has been reviewed and revised by legal counsel for both COUNTY and
27 CONSULTANT, and no presumption or rule that ambiguities shall be construed against the
28

1 drafting party shall apply to the interpretation or enforcement of the same or any subsequent
2 amendments thereto.

3 IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed the
4 day and year first above written.

6 COUNTY OF IMPERIAL

NOBEL SYSTEMS, INC.
a California Corporation

9 _____
10 By: RYAN E. KELLEY
Chairman of the Board of Supervisors

By: Michael Samuel, President

11 ATTEST:

13 _____
14 By: Blanca Acosta
Clerk of the Board of Supervisors

15 APPROVED AS TO FORM:

16 COUNTY COUNSEL
17 Eric Havens

19 _____
20 By: Andrew Briseno
Deputy County Counsel

22 APPROVED AS TO FORM AND CONTENT:

24 CITY OF EL CENTRO:

CITY OF HOLTVILLE:

26 _____
27 City Manager

City Manager

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CITY OF CALEXICO:

City Manager

CITY OF IMPERIAL:

City Manager

CITY OF WESTMORLAND:

Mayor

STATE OF CALIFORNIA
DEPARTMENT OF
TRANSPORTATION:

CITY OF BRAWLEY:

City Manager

CITY OF CALIPATRIA:

City Manager

IMPERIAL IRRIGATION DISTRICT:

HEBER PUBLIC UTILITY DISTRICT:

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**IMPERIAL COUNTY
DATA SERVICE AGREEMENT**

This Data Service Agreement ("Agreement") is made and entered into this _____, 2023 by and between **COUNTY OF IMPERIAL ("COUNTY")**, a political subdivision of the State of California, and **CITY OF EL CENTRO, CITY OF BRAWLEY, CITY OF IMPERIAL, CITY OF WESTMORLAND, CITY OF CALIPATRIA, CITY OF HOLTVILLE, CITY OF CALEXICO, THE IMPERIAL IRRIGATION DISTRICT, and THE HEBER PUBLIC UTILITIES DISTRICT** (individually "MEMBER" and collectively "MEMBERS"), all municipal entities or public agencies.

WHEREAS, California Government Code Section 6502, et seq. authorizes public entities, including cities, counties, special districts, and joint agencies to enter into agreements; and

WHEREAS, COUNTY and MEMBERS have a mutual interest in developing and maintaining accurate, current and non-duplicated electronically-retrievable geographic information about Imperial County; and

WHEREAS, COUNTY and MEMBERS recognize that a countywide Geographic Information System ("GIS") benefits the citizens of Imperial County by improving the efficiency and effectiveness of local and regional government and enhancing the economic competitiveness of the region; and

WHEREAS, COUNTY and MEMBER recognize that each of them maintains diverse information databases and that combining the information systems will add significantly to the usefulness of a GIS; and

WHEREAS, the COUNTY, pursuant to California Revenue and Taxation Code Section 409, may recover the appropriate costs associated with the reproduction and distribution of the Assessor's assessment roll, parcel maps, and other data.

NOW, THEREFORE, it is agreed by and between the parties that:

1. Term. The effective term of this Agreement shall be July 1, 2023 until June 30, 2028.
2. GIS Services. COUNTY and MEMBERS enter into this Agreement wherein the

COUNTY will provide the following GIS services to the MEMBERS:

1 A. Data Access Service to Geographic Information System Server. These are
2 necessary for the MEMBERS to gain secure access to the Assessor's data. New members only will pay
3 COUNTY a one-time fee of \$200 to recover its cost in setting up the computer and Internet startup and
4 configuration for MEMBER.

5 B. Firewall Configuration. The COUNTY will configure the COUNTY'S Internet
6 firewall to allow MEMBER to access the GIS server by File Transfer Protocol ("FTP"). For security
7 reasons, access will require a public Internet addresses supplied by MEMBER to COUNTY, and a GIS
8 user account provided by COUNTY to MEMBER.

9 C. File Transfer Protocol Specification.

- 10 i. FTP is a method for transferring files over the Internet. MEMBER will
11 use this as the primary method of accessing GIS data.
- 12 ii. COUNTY agrees to provide: 1) a recommendation for the FTP client
13 software to connect to the GIS server and 2) a single point of contact.
- 14 iii. MEMBERS agree to provide: 1) a public Internet address that will be
15 used to connect to the GIS server and 2) a single point of contact.
- 16 iv. MEMBERS must acquire FTP software to be configured to GIS
17 specifications, an Internet connection, and any other item or device
18 necessary to access the GIS server over the Internet.

19 D. Data Management. This service manages the GIS server. It is provided by
20 COUNTY to the MEMBERS at no charge. Data Management Service excludes maintenance of the
21 data.

22 E. Server Maintenance. COUNTY provides maintenance and support required to
23 operate the GIS server and enable the MEMBERS access to data stored thereon.

24 F. Data Storage. COUNTY provides data storage space on the GIS server for all of
25 the data it supports and manages.

26 G. Data Back-up. COUNTY provides backup service for data stored on GIS the
27 server.

28 H. Security. COUNTY provides a secure, unique FTP user account for MEMBER

1 and specifications for secure connection to the GIS system. MEMBER is responsible for ensuring the
2 security of its GIS account information.

3 I. Data Maintenance. This includes maintenance of the database that is provided
4 by the Assessor and stored on the GIS server. The available data on the GIS server is described in the
5 Data Management Plan and includes services necessary for the MEMBER to access data including the
6 GIS basemap, the roll, maps and other GIS data.

7 3. Compensation. MEMBER'S fees, subject to Imperial County Ordinance Section
8 2.24.030, are payable annually to Imperial County and described in more detail in the "DATA COST"
9 column in Exhibit "A", as follows:

10	City of El Centro	\$ 710.09
11	City of Calexico	\$ 492.23
12	City of Holtville	\$ 111.75
13	City of Brawley	\$ 527.30
14	City of Imperial	\$ 218.31
15	City of Calipatria	\$ 140.51
16	City of Westmorland	\$ 78.49
17	Imperial Irrigation District	\$ 8,000.00
18	<u>Heber Public Utility District</u>	<u>\$ 106.21</u>
19	Total	\$10,384.89

20 4. GIS Advisory Committee. A GIS Advisory Committee shall be formed to develop
21 common standards for the county-wide GIS. Standards shall include, but will not be limited to:
22 tracking the source of information on the GIS (metadata); establishing minimum levels of resolution
23 and accuracy; establishing consistent naming of layers; establishing consistent data types; ensuring the
24 data is mutually transferable and useable; determining how the data will be transferred and how often
25 data will be updated.

26 5. Governmental Purpose. COUNTY and MEMBERS agree any of them may use the
27 data supplied by themselves and other MEMBER public entities or agencies for any legitimate
28 governmental use and purpose. The parties further agree that each grants to the other a nonexclusive,

1 nontransferable license for the sole purpose of carrying out legitimate governmental purposes.

2 "Legitimate governmental purpose" includes, but is not limited to: hard copy maps, printed reports,
3 and manipulated and/or processed data files incorporating MEMBER'S data such that the original
4 source data cannot be reconstructed. "Legitimate governmental purpose" shall not include selling,
5 trading or otherwise transferring the data, data system or other forms of electronic information to any
6 other person or entity for profit. MEMBER agrees to display the following disclaimer on all hard copy
7 maps produced from COUNTY data:

8 *This information was created by the Imperial County Assessor's Office for the purpose of*
9 *aiding in the performance and duties of the Assessor's Office. The information and services*
10 *included in or available through the GIS data may include inaccuracies or typographical*
11 *errors. Imperial County makes no representation about the suitability, reliability, availability,*
12 *timeliness, or accuracy of its GIS data for any purpose. The GIS data and information are*
13 *provided "as is" without warranty of any kind. Imperial County disclaims all warranties and*
14 *conditions with regard to the services, including all implied warranties and conditions of*
15 *merchantability of fitness for a particular purpose, title and non-infringement.*

16 6. Altering The Data of Another Party. COUNTY and MEMBERS agree that no party
17 may give, sell, copy, transfer, or alter the data of any other party without the express prior written
18 authorization of the affected party/parties. All manipulated and/or processed data sets shall be limited
19 to a reasonable scope and size based on a defined project.

20 7. Proprietary Interests. COUNTY and MEMBERS shall confer in good faith to protect
21 and preserve their respective proprietary interest in the data shared within the scope of this Agreement,
22 during this Agreement, and shall survive termination of this Agreement.

23 8. Compliance With California Gov. Code § 6254.21. MEMBERS agree and shall
24 comply with the provisions of California Gov. Code Section 6254.21 which provides that a state or
25 local agency may not post the home address or telephone number of any elected or appointed official
26 on the internet without first obtaining the written permission of the individual.

27 9. Liability and Indemnification. Each party agrees to indemnify, defend and hold
28 harmless, its agent, officers, and employees from and against all liability, expense, and claims for
damages arising from the sole conduct and services provided hereunder by the other party to the extent
that such death, injury or damage resulted from the sole negligence or willful misconduct of the other
party, its agent, officers or employees. No party is liable to any other party for loss or inaccuracy of

1 GIS data. Each party is encouraged to have current backup storage of all compiled GIS data and other
2 relevant information. Further, no party is liable to any other party for any damage to information or
3 equipment resulting from the transfer of data from one medium to another.

4 10. Notices. Any party may, by written notice to the others, change its address where notice
5 shall be made. All notices are effective upon receipt. All notices shall be in writing and addressed or
6 delivered as follows:

7
8 **COUNTY:**

9 Imperial County Assessor
10 940 Main Street, Suite 115
11 El Centro, CA 92243

12 **MEMBERS:**

13 City of El Centro
1275 W, Main St.
El Centro, CA 92243

City of Calipatria
125 N. Park Ave.
Calipatria, CA 92233

14 City of Holtville
121 W 5th
15 Holtville, CA 92250

City of Westmorland
355 S Center
Westmorland, CA 92281

16 City of Brawley
17 400 Main Street
18 Brawley, CA 92227

City of Imperial
420 S. Imperial Ave.
Imperial, CA 92251

19 City Manager
20 City of Calexico
608 Heber Ave.
21 Calexico, CA 9223

Imperial Irrigation District
P. O. Box 937
333 E. Barioni Blvd.
Imperial, CA 92251

22 Heber Public Utility District
23 1078 Dogwood Road, Suite 103
24 P. O. Box H
Heber, CA 92249

25 11. Termination and Cancellation.

26 A. Termination By County. This Agreement is subject to immediate termination by
27 COUNTY upon material breach of this Agreement by MEMBER, and COUNTY shall have sole
28 discretion to determine if a breach has, in fact, occurred. MEMBER shall be given written notice of

1 said breach, and its access to the GIS will be immediately denied. The remaining MEMBERS will not
2 be affected by such termination. In the event of termination, MEMBER forfeits any paid fees.

3 B. Cancellation By Party. Any party may cancel this Agreement, without cause, by
4 providing the other parties thirty (30) day's prior, written notice. In the event of cancellation, the party
5 forfeits any paid fees.

6 12. Governing Law and Venue. This Agreement shall be governed by the laws of the State
7 of California. It is made and entered into in Imperial County, California. To the extent permitted by
8 law, any action brought by either party with respect to this Agreement shall be brought in court of
9 competent jurisdiction within said COUNTY.

10 13. Attorney Fees. If any party brings an action to enforce the terms or declare rights
11 hereunder, the prevailing party to any such action, on trial or appeal, shall be entitled to its reasonable
12 attorney's fees to be paid by the losing party as fixed by the court.

13 14. Binding. This Agreement shall be binding upon the heirs, successors, and assigns of
14 the parties hereto.

15 15. Modification. No modification, waiver, amendment, discharge, or change of this
16 Agreement shall be valid unless the same is in writing and signed by all parties, except that COUNTY
17 may unilaterally admit a new MEMBER.

18 16. Additional MEMBERS. A new public entity or agency desiring to enter into this
19 Agreement may do so upon the written consent of COUNTY, and will be subject to the terms and
20 conditions of this Agreement. COUNTY will send written notice of the new MEMBER, along with its
21 address for notice, to all other MEMBERS.

22 17. Counterparts. This Agreement may be executed in counterparts.

23 18. Severability. If any provision in this Agreement is held by a court of competent
24 jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue
25 in full force without being impaired or invalidated in any way.

26 19. Entire Agreement. This Agreement contains the entire contract among the parties
27 relating to the transactions contemplated herein and supersedes all prior or contemporaneous
28 agreements, understandings, provisions, negotiations, representations, or statements, either written or

1 oral.

2 20. Authority. Each MEMBER warrants that the party executing this Agreement on behalf
3 of MEMBER is authorized to do so by MEMBER's legislative or governing body, consistent with
4 California Gov. Code §6502.

5 IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written
6 above.

7 **COUNTY OF IMPERIAL:**

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10 _____
By: RYAN E. KELLEY
Chairman of the Board of Supervisors

11

12 **ATTEST:**

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14 _____
By: Blanca Acosta
Clerk of the Board of Supervisors

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16 **APPROVED AS TO CONTENT:**

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18 _____
By: Robert Menvielle
Imperial County Assessor

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20 **APPROVED AS TO FORM:**

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22 ERIC HAVENS,
COUNTY COUNSEL

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25 _____
By: Andrew Briseno
Deputy County Counsel

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MEMBERS:

CITY OF EL CENTRO:

City Manager

CITY OF CALEXICO:

City Manager

CITY OF IMPERIAL:

City Manager

CITY OF WESTMORLAND:

Mayor

HEBER PUBLIC UTILITY DISTRICT:

General Manager or Board President

CITY OF HOLTVILLE:

City Manager

CITY OF BRAWLEY:

City Manager

CITY OF CALIPATRIA:

City Manager

IMPERIAL IRRIGATION DISTRICT:

General Manager or Board President