STAFF REPORT

ITEM NO. 9

CITY OF OCEANSIDE

DATE: August 1, 2007

TO: Honorable Mayor and City Council Members

FROM: Information Technologies Division

SUBJECT: **APPROVAL OF A SOFTWARE LICENSE AGREEMENT FOR THE PURCHASE OF A CITYWIDE ONLINE FINANCIAL REPORTING SYSTEM TO PROVIDE MONTHLY BUDGET, REVENUE AND EXPENDITURE REPORTS TO DEPARTMENTS AND DIVISIONS.**

SYNOPSIS

Staff recommends that the City Council approve a software license agreement with Cognos Corporation of Burlington, Massachusetts, in the amount of $61,600 for the purchase of a Citywide Online Financial Reporting System, and authorize the City Manager to execute the agreement.

BACKGROUND

The City of Oceanside does not have a Citywide reporting system that provides efficient means to access up-to-date financial information and department application data. The City's financial and specialized department applications have different reporting tools with software licenses, maintenance agreements, software upgrades and skill sets to master. Having one centralized tool will improve efficiency and our ability to provide custom reports.

Currently, management staff and budget coordinators rely on Information Technologies (I.T.) staff to create and disseminate monthly budget, revenue and expenditure reports. These are the reports that all City employees access over the City Intranet in the Financial Reports section. In order to post the reports every month I.T. staff must:

- Wait for Financial Services staff to enter data into JDE system and "close out" the month.
- Update reports, convert them to PDF format and post on the Intranet site.

This is a highly inefficient and lengthy process that results in delayed access to the data. These reports are static, with no functionality for users to modify the data, access historic records, or export to Excel or other file formats.

In addition to these reports, there is an ever-increasing need to produce additional customized reports for Financial Services, Human Resources, Payroll, Public Works, Fire and other departments. Creation and maintenance of these reports is becoming very complex and time-consuming.

The reports are currently created with Crystal Reports software solution which requires a license for each individual workstation, and specialized software training. Since the City does not have a centralized report library, all these reports are stored on departmental drives. This leads to difficulties in sharing the reports among the departments and the possibility of exposing sensitive confidential information.

ANALYSIS

Implementing a centralized reporting system will result in higher Citywide efficiencies and effectiveness for reporting and will add an additional tool to ensure various department conform to the City's purchasing policies. The goal is to build a secure business intelligence report creation, publishing and delivery infrastructure for all City departments. This will be accomplished by implementing Cognos software with the capability for developing standard financial reports, analytical reports, report security and report delivery.

The Cognos reporting solution implementation is driven by the need for timely access to critical data, and the need to be able to change the reports as needed by the departments. The ability will reduce the cost associated with software licenses and maintenance agreements.

With Cognos, users will be able to go to one Web site and access all of their reports. They will be able to manipulate the reports with pre-set parameters, schedule the reports to run at specified times, control how often they can save and archive them, export the reports to a variety of formats, etc.

Reports will be facilitated within a secure web environment. Report modification, archiving and exporting is new functionality that will greatly improve the current business process. All reports, regardless of which department they belong to, will be stored in one centralized location, on the new server. This will eliminate the current issues with report sharing and accessibility.

Implementation of the Cognos reporting system will satisfy the business needs of City staff by providing instant access to real-time data resulting in increased productivity and job effectiveness. It will reduce the total cost of software ownership for the City. The software will enable the end users to be owners of their reports and to be self-sufficient in managing the report data.

I.T. staff will work closely with Financial Services staff to ensure seamless transition to the new reporting system. Financial Services staff will make a selection of financial reports to

be converted to the new system, approve the report formatting and will work with I.T. staff to provide training and guidelines for City departments' management staff and budget coordinators.

Other City departments (Fire, Human Resources, Public Works, Water, etc.) will greatly benefit from the new system. Reporting tools that are currently in use with specialized department software require complex maintenance and individual licensing. Cognos software will provide easy report creation, publishing, distribution and centralized report storage.

I.T. staff will re-write selected financial reports and other custom reports and set necessary report security levels. This will ensure security of confidential and sensitive data and eliminate the need to store the reports on departmental drives. Users will be able to view and manipulate financial reports over the Web site, archive historic information, and export the reports to a variety of formats (Excel, PDF, HTML, etc.) without having to rely on I.T. staff.

Cognos software offers the solution for users to create their own reports and run ad-hoc queries. This can be accomplished by setting up "Meta-Data" - universal data dictionary. Data dictionary will explain complex database fields in our JD Edwards financial system in simple terms. Users will be able to create their own financial reports, choosing the values and data they need, without having to be proficient in database language and programming.

Automating current processes, eliminating the need to rely on I.T. staff to create the reports and providing a secure reporting environment will be the key aspects of the new system.

The Information Technologies staff worked with three potential vendors, including Cognos. Vendors provided proposals that addressed the requirements identified by Information Technologies. The vendors and their quoted costs were:

Vendor	**Quote**
Business Objects	$ 110,000
Information Builders	$ 99,670
Cognos Corporation	$ 61,600

After reviewing each of the proposals and conducting extensive on-site and online product demonstrations, staff reached a consensus that, provided the vendor could complete the project as specified in their proposal, Cognos Corporation would be the logical choice. In follow-up discussions, Cognos Corporation was able to adequately address all of staff's concerns, and thus became the unanimous choice.

Approximate costs to purchase Cognos Reporting System are as follows:

Cognos Reporting System	$61,600

Hardware (Server)	$8,025
Total Estimated Cost	$69,625

Annual support service fee is 16 percent of the Cognos Report System net cost. First year service fee is included in the $61,600 amount. For subsequent years, the annual 16 percent service fee (approximately $9,860) will be paid from Information Technologies software account (841.194282.5214).

FISCAL IMPACT

The cost for the software and hardware acquisition is approximately $69,625. Sufficient funds for software and hardware acquisition are available in the Information Technologies software account (841.194282.5393).

COMMISSION/COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve a software license agreement with Cognos Corporation of Burlington, Massachusetts, in the amount of $61,600 for the purchase of a Citywide Online Financial Reporting System, and authorize the City Manager to execute the agreement.

PREPARED BY:

Michael Lee Sherwood
Chief Information Officer

SUBMITTED BY:

Peter A. Weiss
Interim City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager

Paul Bussey, Interim Financial Services Director

Attachment 1 – Cognos Order Agreement

ORDER AGREEMENT

This Order Agreement ("Order Agreement"), effective as of the 31st day of August, 2007 ("Effective Date"), is by and between Cognos Corporation, a Delaware corporation located at 15 Wayside Road, Burlington, Massachusetts 01803 ("Cognos") and the business entity identified below ("Licensee") and shall be governed by the Cognos General Software License, Support and Service Terms ("Terms") by and between the parties effective as of August 31, 2007. Capitalized terms in this Order Agreement not otherwise defined shall have the same meanings as set forth in the Terms. In the event of any conflict between the provisions of the Terms and the provisions of this Order Agreement, the provisions of this Order Agreement shall govern.

1. **Licensee:** **City of Oceanside**
300 North Coast Highway
Oceanside, CA 92054

2. **Software License Terms:**
Cognos grants to Licensee a perpetual, non-exclusive, non-transferable (except as otherwise provided in the Terms) license to use the following Software solely for Licensee's internal use in North America:

License

Item No.	Software Product	License Type	No. of Named Users/Copies
1	ReportNet Administrator	Named User/Intranet	2
2	ReportNet Recipient	Intranet	Anonymous Users

Definitions and Restrictions

(i) "Intranet" means use of Software by Licensee's employees using an internal network not accessible to the general public.

(ii) "Named User" means an individual who is authorised by Licensee to use the specified Software, deployed through a corresponding Related Server, whether or not that individual is logged on to that Software.

(iii) "Related Server" means a reasonable number of copies of the corresponding Windows network server Software required solely to allow Licensee to deploy and support the applicable Named Users licensed pursuant to this Order Agreement in a production environment.

(iv) "Anonymous Users" means that Licensee can allow authorized users to access the corresponding Software, deployed solely through the Licensed Server(s), as needed, without regard for the number of such users.

(v) "Licensed Server" means that Licensee shall have the right to deploy the corresponding Software on a single Windows machine with up to two microprocessors with no more than two cores per microprocessor through which Licensee is authorized to deploy separately licensed corresponding Anonymous Users.

(vi) "ReportNet Recipient" license requires Licensee to restrict Named Users to access through Cognos Connection or via e-mail solely to view reports and set personal preferences for languages, time zones etc., and Licensee will configure the ReportNet software delivered pursuant to this Order Agreement in a manner consistent with the foregoing limitations to ensure that Licensee and any such Named Users are restricted from using any other functionality of the ReportNet software.

(vii) "ReportNet Administrator" license requires Licensee to restrict Named Users to the right to: view reports, set personal preferences, run and schedule reports, interact with prompts, output reports to other formats such as pdf and csv, subscribe to a scheduled report, create and manage report folders, personalize standard reports, use the Query Studio and Report Studio modules and functionality, administer the ReportNet environment in order to provide server administration and security and report scheduling administration, and model metadata via Framework Manager, and Licensee will configure the ReportNet software delivered pursuant to this Order Agreement in a manner consistent with the foregoing limitations to ensure that Licensee and any such Named Users are restricted from using any other functionality of the ReportNet software.

3. **Fees/Payment Terms:**
License Fee*: $61,600.00

*First Year Support Services included.

Payment Terms: Net 30 days from the Effective Date. Shipping and tax not included.

4. **Related Documentation:**
Licensee shall receive one (1) copy of Related Documentation for each Software item licensed hereunder. Licensee has the right to make extra copies of Related Documentation up to the number of copies licensed; provided Licensee reproduces all proprietary right notices which appear on the original version of Related Documentation.

5. **Additional Terms:**

(i) The terms set forth herein are only valid if Cognos receives an executed copy of this Order Agreement prior to the close of business on August 31, 2007.

(ii) The annual support service fee for standard support services for the annual support service term beginning one year from the Effective Date for the Software licensed hereunder shall be 16% of the fees set forth in Section 3 above. For the next two consecutive annual terms of paid support services thereafter, the annual support services fee for the Software licensed hereunder may not increase by an amount in excess of the percentage increase in the Consumer Price Index for the immediately preceding year.

(iii) Use of the Software and Documentation shall only apply to City of Oceanside. Licensee may not authorize entities located outside of City of Oceanside, to use the Software, even if they should hereafter become Licensee's Affiliates or if Licensee otherwise begins providing services to them, whether as a result of merger, consolidation, reorganization, or redistricting, or for any other reason.

(iv) Licensee understands that Cognos has provided Licensee with the Software licensed above at a substantial discount off of Cognos' standard pricing for comparable transactions in part because Licensee has represented that it is a small business with annual revenues of less than $500M.

(v) Cognos shall deliver the Software licensed in Section 2 above to Licensee electronically. Licensee shall cooperate with Cognos upon request by providing Cognos with documentation of Licensee's receipt of the Software via electronic means. The Licensee contact info is as follows:

Licensee Ship To Address: 300 North Coast Highway, Oceanside, CA 92054
Licensee Contact Name: Sandra Djordjevich
Licensee Contact Email: sdjordjevich@ci.oceanside.ca.us
Licensee Contact Phone Number: 760-435-3825

THE AUTHORIZED REPRESENTATIVES OF COGNOS AND LICENSEE HAVE EXECUTED THIS ORDER AGREEMENT SIGNIFYING THEIR AGREEMENT TO ITS CONTENTS.

COGNOS CORPORATION

By: KPS

Name: Kevin P. Shone

Title: Sr. Corporate Counsel/Secretary

Kevin Shone's signature notarized by: Yna C

CITY OF OCEANSIDE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY

JOHN P. MULLEN
City Attorney

COGNOS GENERAL SOFTWARE LICENSE, SUPPORT & SERVICES TERMS ("Terms")

1.0 GENERAL TERMS

1.1 These Terms, effective the 31st day of August, 2007 ("Effective Date"), govern the license by Licensee of Cognos software programs in object code form ("Software"), and the related user manuals and documentation, in hard copy or electronic format ("Related Documentation"), as well as the provision of support for the Software ("Support") and other services relating to the Software ("Services"). In these Terms, unless otherwise stated, the word "Software" includes "Related Documentation".

1.2 Software, Support and Services will be provided to Licensee, pursuant to the order agreement appearing on the face of this document or in a separate or any subsequent document referencing these Terms executed by both parties ("Order Agreement"). Each Order Agreement will be subject to these Terms. Any conflict between these Terms and an Order Agreement will be resolved in favor of the Order Agreement for that Order Agreement only and any conflict between Order Agreements will be resolved in favor of the most recent.

2.0 SOFTWARE LICENSE

2.1 Cognos grants to Licensee a perpetual, non-exclusive, non-transferable (except as otherwise provided herein) license to use the Software described in an Order Agreement in the applicable jurisdiction. Each copy of the Software and any upgrade or new release of the Software provided to Licensee is subject to the provisions of these Terms. Cognos will deliver to Licensee a set of master media for the current version of each item of Software from which Licensee may copy the Software as licensed.

2.2 Licensee's use of Software is limited to the hardware (computers, CPU's or servers), the number of copies or users, and such other restrictions, as are set forth in an Order Agreement, except that additional copies may be made for archival or back-up purposes only. Licensee is responsible for installing the Software and for copying and installing any upgrades or new releases of the Software. Licensee may purchase additional copies of Related Documentation at prevailing Cognos prices.

2.3 Except as otherwise provided in an Order Agreement, Licensee will use the Software only for its own internal data processing purposes, and Licensee will not sublicense, distribute or otherwise make the Software available to any unrelated third party (including, without limitation, any contractor, franchisee, agent or dealer) without first obtaining the written agreement of (a) Cognos to that use, and (b) such third party to comply with these Terms.

2.4 Licensee may distribute or make the Software available to any entities over which the Licensee exercises effective control ("Affiliates"). The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of management and policies, whether through the ownership of voting shares or by contract. Additional copies/users of the Software for use by Affiliates may be either licensed by Licensee on behalf of Affiliates named in an Order Agreement (for which the Licensee will be jointly and severally liable) or an Affiliate may execute a separate Order Agreement subject to these Terms.

3.0 SUPPORT & SERVICES

3.1 Cognos will provide the level of Support for the Software set forth in the Order Agreement in accordance with the prevailing Cognos Support Guide. The Support Guide is a document issued by Cognos describing Support options and procedures and may be amended from time to time by Cognos. Any changes to the Support Guide shall become effective upon the next annual support term. Requests for Support will be directed through the Licensee's representatives to the Cognos Support Centers identified in an Order Agreement. Support will commence on delivery of the Software to Licensee. Licensee may cancel Support at any time by giving Cognos not less than 30 days written notice and Licensee shall receive a prorated refund of any unused support services after the expiration of the 30 day notice period.

3.2 Cognos will perform the Services (consulting, training, education or other Services), if any, described in an Order Agreement. Cognos may assign the performance of any Services to any contractor, with the consent of Licensee (which will not be unreasonably withheld). Cognos does not guarantee any estimates but will notify Licensee as soon as practicable if an estimate will be exceeded. Licensee may cancel any Service by providing ten (10) days written notice to Cognos. Licensee will pay for Services performed before termination and will be liable to pay for training or education cancelled, which was scheduled inside such ten (10) day period.

3.3 Cognos retains all right, title and interest in any software, documentation or other works provided or developed as a result of performing Services ("Works"). Cognos grants Licensee a perpetual, non-exclusive, non-transferable license to use and modify the Works solely for Licensee's internal purposes and not to sublicense, distribute or make available to third parties. Either party may (a) independently develop works competitive with or similar to the Works, and (b) make use of the know-how acquired, principles learned or experience gained during the performance of the Services.

3.4 For a period ending six (6) months after the completion of any Services, neither party will directly or indirectly solicit or induce away from the other any employee or sub-contractor of the other who has provided those Services.

4.0 FEES & CHARGES

4.1 Licensee will pay Cognos the fees, charges or other amounts specified in an Order Agreement within thirty (30) days of date of receipt of an invoice. Cognos may issue an invoice: (a) upon the shipment of Software or Related Documentation, (b) in advance of the provision of Support or Services unless otherwise set forth in an Order Agreement or applicable statement of work executed by both parties. Licensee shall pay a service charge on overdue accounts equal to the lesser of 1.5% per month or the maximum legal interest rate.

4.2 Shipping costs and all sales, value-added and other taxes relating to Licensee's payments to Cognos for Software, Related Documentation, Support and/or Services, excluding taxes on the income of Cognos, will be paid by Licensee. To the extent Licensee is claiming exemption from any applicable taxes, Licensee shall provide Cognos with a valid exemption certificate at the time each applicable Order Agreement is executed.

5.0 CONFIDENTIAL INFORMATION

5.1 In the course of their dealings, the parties may disclose to one another confidential information relating to their business ("Confidential Information"). To the extent allowed by California law, including but not limited to the California Public Records Act, neither party will disclose the other party's Confidential Information to any third party without the prior written consent of the other party, nor will a party make use of any of the other party's Confidential Information except in the performance of rights or obligations under these Terms. Each party will use at least the same degree of care to avoid disclosure of the other party's Confidential Information as it uses with respect to its own Confidential Information, but in no event shall less than reasonable care be used.

5.2 Confidential Information does not include information: (a) generally available to or known to the public, (b) previously known to the recipient without any obligation of confidentiality, (c) independently developed by the recipient outside the scope of these Terms without any use of the other party's Confidential Information, (d) lawfully disclosed to the recipient by a third party under no obligation of confidentiality, or (e) disclosed pursuant to a valid court order or as required by a judicial court or tribunal of competent jurisdiction.

6.0 WARRANTY

6.1 Cognos warrants that: (a) it has the right to grant the license to use the Software as set out in these Terms; (b) for a period of ninety (90) days following the initial delivery of the Software, or of any new release of the Software, to Licensee: (i) the Software will perform in conformity with its Related Documentation, and (ii) the media provided by Cognos will be free of defects in workmanship; (c) there are no date issues that will impair the reporting of data or the proper functioning of the Software in accordance with its specifications before, during, or after the year 2000, including February 29, 2000, excluding any impairment caused, present or inherent in the data, database or native file system that the Software accesses (including, but not limited to, dates or date formats that are not century aware); (d) the Software will function in accordance with its Related Documentation in each of the currencies, including the Euro, constituting the European Monetary Union ("EMU"), and enable a user to process its data in accordance with the legal framework implementing the EMU, excluding any malfunction caused, present or inherent in the data, database or native file system that the Software accesses; (e) the Software and the medium on which it was originally provided to Licensee is free from any virus at the time of delivery; and (f) Support and Services will be provided with reasonable skill and care conforming to generally accepted software industry standards.

6.2 THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE.

6.3 If the above warranties are breached, Cognos will, at its option and at no cost to Licensee, (a) provide remedial services necessary to enable the Software, Support or Services to conform to the warranty, or (b) replace any defective Software or media, or (c) refund amounts paid in respect of the defective Software, Support or Services. Cognos' warranty obligations will only extend to material errors that can be demonstrated to exist in an unmodified version of the Software except where the modifications were carried out by Cognos or with its approval. Licensee will notify Cognos promptly in writing of any breach of warranty. Licensee will provide Cognos with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedies set out in this subsection are the Licensee's sole remedies for breach of the above warranties.

6.4 In certain jurisdictions some or all of the provisions in this Section may not be effective or the applicable law may mandate a more extensive warranty in which case the applicable law will prevail over these Terms.

7.0 LIMITATION OF LIABILITY

7.1 Cognos will not be liable to Licensee for loss of profits, or special, indirect, incidental, consequential or exemplary damages, including costs or legal expenses, in connection with the supply, use or performance of the Software or the performance of its other obligations pursuant to these Terms, even if it is aware of the possibility of the occurrence of such damages. In certain jurisdictions the foregoing limitations may not be effective, in which case the applicable law will prevail over these Terms.

7.2 In any event, the total liability of Cognos (including any licensors of products forming part of the Software) to Licensee for any claim under these Terms or any Order Agreement, whether it arises by statute, contract or otherwise, will not exceed the lesser of $100,000 or the amounts paid to Cognos by Licensee under these Terms or any Order Agreement for the Software, Support or Services which form the subject of the claim. The foregoing limit does not apply to (i) the indemnity given in Section 9, or (ii) death or personal injury arising from negligence of Cognos, or (iii) in respect of accidental loss of or damage to Licensee's tangible property, to the extent caused by the negligence of Cognos, its employees or subcontractors. In the event of accidental loss of or damage to Licensee's tangible property, to the extent caused by the negligence of Cognos, its employees or subcontractors, the limit of liability is $1,000,000.

8.0 PROPRIETARY RIGHTS

Licensee acknowledges Cognos' representation that the Software contains confidential and proprietary information and trade secrets belonging to Cognos and its licensors, and that title in and rights to the Software remains exclusively with Cognos. Licensee's rights to the Software are strictly limited to those granted in these Terms. Licensee will not decompile, disassemble or otherwise reverse engineer the Software. If the foregoing provision is prohibited by applicable law, Licensee will provide Cognos with advance written notification of (a) its intention to decompile, disassemble or otherwise reverse engineer the Software, and (b) the nature of the work involved. Cognos will be given the right of first refusal to perform such work at its prevailing rates and prices.

9.0 INTELLECTUAL PROPERTY INDEMNIFICATION

Cognos will indemnify, defend and hold Licensee harmless against any claims, legal actions, losses and other expenses arising out of or in connection with any claims that the Software infringes or violates any intellectual property right of any third party ("Claim"), on the condition that Licensee notifies Cognos promptly of the Claim and gives Cognos sole control of the defense and negotiations for its settlement or compromise. If Licensee is, or may become, prohibited from continued use of any Software by reason of an actual or anticipated Claim, Cognos will use its reasonable efforts to (a) obtain for Licensee the right to use the Software, or (b) replace or modify such Software so that it is no longer subject to a Claim, but performs the same functions in an equivalent manner. If neither of the foregoing options are feasible in Cognos' sole discretion, Cognos will refund to Licensee the unused portion of the license fees paid in respect of the Software (determined by depreciating the license fees paid on a straight-line basis over three years) and any corresponding unused fees paid in respect of Support. Cognos will have no liability for any Claim based on (i) use of other than a prevailing release of the Software (if the Claim could have been avoided by that release and Licensee has been so notified), or (ii) any use or modification of Software not approved in writing by Cognos. THIS SECTION STATES THE ENTIRE RESPONSIBILITY OF COGNOS CONCERNING CLAIMS.

10.0 TERMINATION

Either party may terminate these Terms if the other party fails to remedy a breach of any material obligation under these Terms or any Order Agreement within fifteen (15) days of receiving written notice from the other party detailing such breach. If the termination is related to other than a material breach by Licensee, Licensee shall continue to have the right to use Software licensed prior to the date of termination. Upon termination, Licensee shall continue to be liable for any obligations arising, liabilities accrued or amounts payable under all Order Agreements executed prior to termination. In addition to any other remedies, Cognos may seek injunctive relief for any breach of these Terms or any Order Agreement by Licensee (or any Affiliate). Sections 2, 3.1, 5, 7, 8, 9 and 11 of these Terms shall survive the termination of this Agreement.

11.0 AUDIT RIGHTS

Licensee will keep accurate records of the number of copies of the Software made and distributed, the number of end users of the Software and their location. Cognos may enter Licensee's premises during business hours on five (5) business days notice for the purpose of examining, or having examined (at Cognos' own expense), Licensee's relevant books, records and computers to verify Licensee's fulfillment of its obligations under these Terms and/or any applicable Order Agreement.

12.0 GENERAL

12.1 All notices pursuant to these Terms will be in writing and given by hand delivery, registered mail or certified mail (postage prepaid) to the other party at the address appearing on the Order Agreement. Licensee will promptly give written notice of any change in its address or addressee. Notices will be deemed to be received on delivery or on the fifth (5th) business day after mailing, as the case may be.

12.2 No delay or failure in exercising any right under these Terms, or any partial or single exercise of any right, will constitute a waiver of that right or any other rights under these Terms. No consent to a breach of any express or implied term set out in these Terms constitutes a consent to any subsequent breach.

12.3 If any provision of these Terms is, or becomes, unenforceable, it will be severed from these Terms and the remainder of these Terms will remain in full force and effect.

12.4 These Terms are binding upon and will inure to the benefit of both parties, and their respective successors and assigns. Either party may assign or otherwise transfer its rights under these Terms to a third party ("assignment") on the condition that (a) the third party delivers to the non-assigning party a duly executed document agreeing to be bound by these Terms and (b) the assignment is part of a bona fide internal corporate reorganization or an arm's length commercial transaction. Despite the foregoing, if all or part of the Licensee's business is acquired by a third party (by way of asset or share purchase, merger or amalgamation) or if it becomes an Affiliate of a third party, the scope and effect of these Terms and any Order Agreement(s) will be limited (a) to the business carried on by the Licensee and its Affiliates prior to the acquisition, and (b) to the total number of copies or users of Software actually deployed by Licensee immediately prior to either of the foregoing events.

12.5 This agreement, consisting of the Terms and all Order Agreements referencing the same, and any matters relating to it, will be governed, construed and interpreted in accordance with the laws applicable in the Commonwealth of Massachusetts, excluding its law relating to conflicts of laws and the United Nations *Convention on Contracts for the International Sale of Goods* (and any legislation implementing such Convention).

12.6 Licensee will ensure that, to the extent permitted hereunder, the Software (and any direct products thereof) is exported or re-exported in compliance with applicable statutes or regulations (including U.S. export laws) relating to the country of destination, or to the users or uses of the Software.

12.7 This agreement, consisting of the Terms and all Order Agreements referencing the same, is the entire understanding and agreement between Licensee and Cognos with respect to the Software, and it supersedes all prior negotiations, commitments and understandings, verbal or written, any purchase order issued by Licensee and any terms (in any form or medium) provided with or in the Software. These Terms or an Order Agreement may only be amended or otherwise modified by written agreement signed by the authorized signatories of both parties. Any amendment shall not be effective unless approved by the Oceanside City Council.

12.8 Cognos has deposited the source codes of the Software in escrow. Licensee shall become a beneficiary under the agreement between Cognos and the escrow agent upon execution of these Terms. Licensee shall have the right to receive the source code of the Software licensed hereunder upon Cognos (i) filing a petition for liquidation via bankruptcy or an assignment for the benefit of creditors; (ii) ceasing normal business operations; or (iii) failing to provide support for the Software required under a valid maintenance agreement between Cognos and Licensee for a fifteen day period after receipt of written notice by Cognos from Licensee.

12.9 At such time as these Terms and any Order Agreement become effective, the Licensee authorizes Cognos to use Licensee's name in a press release or similar communication referring to the license of the Software by the Licensee. Any additional information relating to the license of the Software shall be reviewed and approved by Licensee prior to publication.

IN WITNESS WHEREOF, THE AUTHORIZED REPRESENTATIVES OF COGNOS AND LICENSEE HAVE EXECUTED THESE TERMS AS OF THE EFFECTIVE DATE.

COGNOS CORPORATION

By: _____

Name: Kevin P. Shone

Title: Sr. Corporate Counsel/Secretary

Kevin Shone's signature notarized

CITY OF OCEANSIDE

By: _____

Name: _____

Title: _____