

BOWMAN 32443 systems®

This Agreement is made and effective as of this **1st day of August, 2011**, (the "Effective Date") by and between BOWMAN SYSTEMS L.L.C. (hereinafter referred to as "BOWMAN"), with a place of business at 333 Texas Street, Suite 300, Shreveport, Louisiana 71101, whose facsimile number is (318) 213-8784 and the CITY OF LONG BEACH, a California municipal corporation (hereinafter referred to as "CLIENT") with a permanent address of 333 West Ocean Boulevard, Long Beach, California 9080215 whose facsimile number is (562) 570-4066.

WHEREAS, BOWMAN has developed or otherwise is the owner of certain software products and know-how that manages data and information provided via company intranets and World Wide Web based portals and sites;

WHEREAS, CLIENT desires to obtain from BOWMAN the right to use certain of BOWMAN's software products and professional services to manage and maintain its data and information;

NOW, THEREFORE, in consideration of the premises and in further consideration of the performance of the terms and provisions herein contained, as well as other good and valuable consideration, BOWMAN and CLIENT do hereby contract and agree as follows:

I. DEFINITIONS. As used in this Agreement, the following terms shall have the following meanings and other defined terms shall have the meanings that elsewhere may be set forth herein or in any Rider hereto:

1. **Act** refers to the federal Copyright Act, as it may be amended from time to time hereafter.
2. **Administrative End User** refers to end users who may be system administrators for CLIENT and who have administrative access to the Web Sites and are responsible for setting up CLIENT's security structure, assigning and maintaining lists of passwords and end users, are responsible for all data, data input and data management, and are responsible for End User License Agreement management, execution, and issuance
3. **Agency End User** refers to agencies and personnel of, or directly contracted by, an agency who have access to the Web Sites to enter or to manage CLIENT data. It does not refer to private persons or members of the public who have access to the Web Sites and who may also therein enter information, depending on the Software Program licensed for use by CLIENT.
4. **Agreement** refers to this Software and Services Master Agreement and all Riders entered into by and between BOWMAN and CLIENT pursuant to this Agreement, whether contemporaneously herewith or hereafter.
5. **Bowman Copyright** means the copyright BOWMAN now or hereafter has on and to the software and applications it has developed, including the Software Programs and shall be indicated as follows: "Copyright © Bowman Systems, L.L.C.," referencing the apposite year.
6. **Bowman Published Pricing** means the rates set and published from time to time by BOWMAN for its Software Products and Services.
7. **Documentation** means tangible descriptions of the functionality and use of the Software Programs.
8. **End User** means any person who uses or accesses the Software Programs or the Web Sites.
9. **End User License Agreement** or EULA means the end user license agreement to which CLIENT must ensure that all End Users consent prior to using or to accessing the Software Programs and the Web Sites. Such agreement may be in hard copy form, a "click-wrap" license, or set forth in the Terms of Use Section.
10. **Fees** mean all fees, charges, costs, and expenses due to BOWMAN from CLIENT pursuant to this Agreement and any and all Riders.
11. **Hosting** means the act of storing the Software Programs and the Web Sites on a Server within a network.
12. **HUD** refers to the U.S. Department of Housing and Urban Development.
13. **Know-How** means all of BOWMAN's knowledge and includes Services and the results of such Services, as well as any and all software ideas, processes, methods, programming aids or flow charts developed, prepared, conceived, made or suggested by CLIENT, BOWMAN, their employees or third parties hired by either or both of them, under or related to the performance of this Agreement and the use of the Software Products, including all such developments as are originated or conceived before, after, or during the Term and are completed or reduced to practice thereafter.

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14. **Initial Term** means the first thirty-six (36) months of this Agreement commencing at midnight on August 1, 2011, and, unless sooner terminated as provided herein, shall terminate at 11:59 P.M. on July 31, 2014.
15. **Intellectual Property** means all forms of BOWMAN's intellectual property, including without limitation, Trade Secrets, Trade Rights, Know-How, Software Products, Work Product, goodwill, moral rights, copyrights, and patents, in existence now or hereafter. Moral rights shall mean BOWMAN's rights to have its intellectual property properly attributed and the right to object to distortion or alteration of its intellectual property that would be prejudicial to its reputation.
16. **License and Licenses** refer to the license and/or licenses granted by this Agreement.
17. **Modification** means any software program that (1) is derivative of or interfacing with the source code of any of the Software Programs or any software owned by BOWMAN; (2) emulates or performs substantially the same functions as the Software Programs or any software owned by BOWMAN or any source code of any of such software; or (3) results from the merger of the source code of any of the Software Programs or any software owned by BOWMAN with other software. It also includes any copies, modifications, or enhancements of the Software Programs, and any trade rights, moral rights or copyrights therein.
18. **Pricing Tables** means the written pricing tables BOWMAN provides to CLIENT that outline the Fees for Software Products and Services purchased by CLIENT.
19. **Renewal Term** means each additional period of time for which this Agreement is renewed pursuant to the terms hereof, with the first renewal period measured from the expiration of the Initial Term, and the remaining periods measured from the expiration of the immediately preceding the original period.
20. **Restricted Use Software** means pre-production, developmental, demonstration, evaluation, and beta Software Programs.
21. **Riders** refer to all riders now or hereafter prepared by BOWMAN and signed by CLIENT for purposes of CLIENT purchasing or obtaining Software Products, Services and Licenses.
22. **Server** means the computer(s) onto which the Software Programs and the Web Sites are to be installed by BOWMAN for use by CLIENT.
23. **Services** mean the professional, consulting, implementation, training, and support services of BOWMAN obtained by CLIENT from BOWMAN pursuant to this Agreement and comprise apart of Know-How even if modified, augmented, enhanced, or supplemented by input, suggestion, information, or by feedback originated by CLIENT during its use of or in anticipation of its use of the Software Products, including all such information provided by CLIENT to BOWMAN prior to the Effective Date.
24. **Software Products** mean collectively the Software Programs, together with all Documentation and Know-How, licensed for use by CLIENT from BOWMAN from time to time under this Agreement and includes any updates, modifications or improvements made thereto.
25. **Software Programs** mean the software and applications of BOWMAN licensed for use by CLIENT from BOWMAN from time to time under this Agreement and includes any updates, modifications or improvements made to such software and applications.
26. **Term** is length of time this Agreement is effective and is the Initial Term and all Renewal Terms.
27. **Terms of Use** means the terms and conditions that govern the use of and access to the Software Programs and the Web Sites by all End Users.
28. **Terms of Use Section** means the section of the Web Sites which set forth the Terms of Use.
29. **Trade Rights** means BOWMAN's trademarks, service marks, trade names, service names, trade dress, logos, Software Program logos, business slogans, and commercial symbols, as any of them may be unilaterally amended from time to time by BOWMAN, and whether any are registered or not, and includes good will.
30. **Trade Secrets** means all of BOWMAN's specifications, documentation, technical data, sales information, quantity and quality of Software Products marketed or licensed, prices, methods of pricing, product and process information, marketing techniques and plans, returns, unannounced products, beta software, product and process information, customer lists and information, results of audits and information acquired during an audit and source code related to the products and services owned or provided by BOWMAN, including those provided under this Agreement.

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31. Web Site means the content of the CLIENT intranet or world wide web based site or portal related to CLIENT's licensed use of the Software Programs.

32. Work Product means any and all software ideas, enhancements to functionality, processes, methods, programming aids or flowcharts, documentation, and white paper developed, prepared, conceived, made or suggested by CLIENT, BOWMAN, their employees or third parties hired by either or both under or related to the performance or use of the Software Programs or the License(s) granted hereunder, including all such developments as are originated or conceived during the Term of this Agreement but are completed or reduced to practice thereafter.

II. OWNERSHIP

1. Title. BOWMAN owns the Software Products, Software Programs, and Intellectual Property. CLIENT acknowledges that the same are and shall remain the sole and exclusive property of BOWMAN. Nothing in this Agreement will be deemed to constitute a transfer by BOWMAN of its title in and to any of the foregoing.

2. Modifications. All Modifications whether developed singly or jointly by CLIENT, BOWMAN, their employees or third parties hired by either or both will be and remain the property of BOWMAN, regardless of whether CLIENT pays for such Modifications and CLIENT shall be due no compensation therefore. Any and all rights, title, and ownership interests that CLIENT and/or its employees may have in and to such Modifications or any tangible media embodying such Modifications are hereby assigned to BOWMAN. CLIENT shall not copy, modify, enhance, or make derivative works of the Software Products or Intellectual Property.

3. Work Product. All Work Product is and will be deemed to be a "work for hire" if consistent with the requirements of U.S. Code, Title 17, Chapter 1, § 101 and are, will be, and remain the exclusive property of BOWMAN, regardless of whether CLIENT pays for same and whether or not deemed to be a "work for hire" within the meaning of U.S. Code, Title 17, Chapter 1, § 101; and any and all rights, title, and ownership interests, including copyright, that CLIENT, its employees, or third parties engaged by CLIENT to assist its use of the Software Products, may have in and to such Work Product or any tangible media embodying such Work Product are hereby assigned to BOWMAN, and CLIENT and any third party engaged by CLIENT shall be due no compensation therefore.

III. TERM and FEES

1. Term, Initial Term, and Renewal Terms. The Term of this Agreement is the Initial Term and all Renewal Terms. At the end of the Initial Term, this Agreement will automatically renew for successive Renewal Terms, unless a party gives written notice of termination to the other party not less than thirty (30) days prior to the end of the Initial Term or the particular Renewal Term, as the case may be. The Fees applicable during each Renewal Term for all additional Licenses, including End User licenses, Software Products, and Services, shall be based on rates determined at the then Bowman Published Pricing. Notwithstanding any other provisions in this Agreement, CLIENT shall only commit to the Agreement during the Term in one (1) year increments with said annual increments contingent upon CLIENT receiving funding from HUD. Should CLIENT not receive its annual HUD funding, the City may terminate this Agreement without penalty.

2. Fees and Payment. CLIENT shall pay BOWMAN all Fees within forty-five (45) days of invoice receipt, subject to CLIENT's receipt of the deliverables hereunder.

3. Budget and Funding Contingency. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of appropriation of funds, for the mutual benefit of both parties in order to avoid delays that would occur if the Agreement were executed after that determination was made. This Agreement is valid and enforceable only if sufficient funds are made available to CLIENT by HUD for the purpose of this program. It is mutually agreed that if HUD does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds. CLIENT has the option to void this Agreement without penalty or to amend the Agreement to reflect any reduction of funds.

IV. GRANT OF LICENSE AND TERMS OF USE.

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1. **License.** Subject to the terms and conditions of this Agreement, BOWMAN grants to CLIENT during and for the Term a non-exclusive, non-transferable license to load the Software Programs onto Server, to use and to access the loaded Software Programs and the Web Sites, and to make available their use to the number of End Users permitted in writing by BOWMAN.
2. **Implementation.** Implementation and support of the Software Programs require full cooperation of CLIENT for the implementation process, including training, and support and the provision of Services to CLIENT.
3. **Restrictions on Use.** CLIENT may use the Software Programs, Software Products, and the Web Sites only for and in connection with its legitimate operations. CLIENT may not rent, sublicense, assign, transfer, sell, license or grant any rights to or interest in the Software Products to any person, or otherwise make same available to third parties or use the Software Products to violate third party rights. CLIENT must comply with each of the terms and conditions of this Agreement. CLIENT may use the Software Products only within the United States and Puerto Rico. CLIENT may not engage the services of any third party to assist it in its use of the Software Products without obtaining BOWMAN's prior written consent and executing and causing to be executed such agreements that BOWMAN may, in its sole discretion, require from CLIENT or any such third party. CLIENT is prohibited from permitting the use of the Software Products on any Server or computer that is not a CLIENT or BOWMAN owned Server or computer and from permitting the linkage of any CLIENT Server or computer using the Software Products with a computer or server that is not CLIENT or BOWMAN owned, unless (1) the prior written consent of BOWMAN shall have been obtained; and (2) CLIENT will have first successfully and at its own expense implemented those security measures, if any, required by BOWMAN for such linkage.
4. **Trade Rights and other matters.** CLIENT will not, and will not permit any person to, alter or delete any intellectual property rights notices, Trade Rights, or any EULA or Terms of Use included in the Software Programs or Software Products or contained in any content of a Web Site made by CLIENT's use of those Software Programs. CLIENT shall not acquire any right to any of the Trade Rights or other form of BOWMAN's intellectual or commercial property. CLIENT shall not remove, delete, or in any manner alter the Trademarks, Trade Rights or other intellectual property rights notices of BOWMAN's or of any third person appearing on the Software Products, or the materials or Web Sites generated by CLIENT's use thereof. BOWMAN may from time to time discontinue or modify its Trade Rights, add new ones, and revise these instructions, or those BOWMAN may from time to time hereafter issue, to protect the standards of quality established for BOWMAN's goods and services marketed and/or licensed under its Trade Rights.
5. **Use of Server(s) and Hosting.** For purposes of this section, the term 'server' includes without limitation the Server. BOWMAN's servers and network may not be used for illegal purposes, or in support of illegal activities. BOWMAN reserves the right to cooperate with legal authorities or injured third parties in the investigation or any suspected crime or civil wrong. Activities which are prohibited include, but are not limited to, unauthorized copying of material, transmittal of chain letters, threatening bodily harm or property damage of individual groups, making fraudulent offers of products, items, or services originating from CLIENT's account or any End User, attempting to access the accounts of others or attempting to penetrate BOWMAN's servers or networks, whether or not the intrusion results in loss of data, or distributing viruses or bulk e-mail through BOWMAN's servers or networks.
6. **End Users.** CLIENT is responsible for all access to and use of the Software Programs and the Web Sites by all End Users and for ensuring that no End User's use of or access to the same (i) will violate this Agreement or (ii) would constitute a violation of this Agreement were the conduct of the End User committed by CLIENT. CLIENT is obligated to have all End Users agree, prior to accessing or using the pertinent Software Program or Web Site, to and comply with the applicable End User License Agreements and Terms of Use Section as either may be amended from time to time by BOWMAN in its sole and unfettered discretion, whether through a "click-wrap" license, a signed written EULA, or the inclusion of a Terms of Use Section, prior to End User's use or access to the Software Programs. In the event the Software Program licensed to CLIENT permits CLIENT to make a Web Site available to the public for members of the public to access and to use, CLIENT is responsible for the conduct of any person who accesses such Web Site and CLIENT must maintain on such Web Site a Terms of Use

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Section. Any End User who does not agree to the applicable EULA or the Terms of Use Section must be denied access by CLIENT to the Software Programs or the Web Site. CLIENT will not, and will not permit any person to, alter or delete any EULA or Terms of Use Section included in the Software Programs or contained in any content of the Web Sites that embody Software Programs, without the prior written consent of BOWMAN.

7. Agency End User Information Disclosure. CLIENT shall provide to BOWMAN upon request all contact and profile information of all Agency End Users and BOWMAN may, upon prior approval and consent of CLIENT, contact such agencies or their personnel from time to time for any business purposes.

8. Administrative End Users. CLIENT shall provide to BOWMAN upon request the list of all Administrative End Users, identifying them by name, employer, address, telephone number and email, and user names and passwords.

9. Data Input and Management. CLIENT is responsible for all information and data input by it and End Users and all output generated in connection with its use of the Software Products, and for maintaining such information, output, and data. CLIENT owns all data input and generated by the use of the Software Products by it and End Users. This does not include information regarding any social services or other agency, nor does it include any enhancements to the functionality of the Software Programs that CLIENT may use or develop, which include any CLIENT developed questionnaires or assessments or changes to the framework of the Software Programs, it being expressly agreed that all enhancements and changes belong to BOWMAN. CLIENT is responsible for all content of the Web Site made by CLIENT's use of the Software Products. CLIENT has sole responsibility for adequate protection of the data input or generated in connection with its use of the Services, Software Products, or the Web Sites and BOWMAN in no event shall have any liability therefore.

10. Upgrades. The Licenses granted herein include all upgrades, including, without limitation, routine system upgrades and major version upgrades.

11. Compliance with Laws. The parties assume all responsibility in assuring compliance with all laws and regulations relating to the respective party's execution of this Agreement, use of the Software Products and Services, and the data and information input by the parties or End Users.

12. Insurance Requirements.

a. BOWMAN shall provide the following policies of insurance:

- i. Professional Liability Insurance in an amount of not less than one million dollars (\$1,000,000) per claim;
- ii. Workers Compensation Insurance in an amount of not less than one million dollars (\$1,000,000) per accident;
- iii. Blanket Honesty Bond in the amount of twenty-five thousand dollars (\$25,000);
- iv. Commercial General Liability Insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than one million dollars (\$1,000,000) per each occurrence and two million dollars (\$2,000,000) general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. The City of Long Beach, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37 07 04), and this insurance shall contain no special limitations on the scope of protection given to the City of Long Beach, its boards and commissions, and their officials, employees and agents. Upon execution of this Agreement, Bowman will cause the policy to be endorsed to state that the insurer waives its right of subrogation against the City of Long Beach, its boards and commissions, and their officials, employees and agents.
- v. Commercial Automobile Liability Insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less

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than five hundred thousand dollars (\$500,000) combined single limit per accident.

- b. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed or canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by BOWMAN. BOWMAN shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.
- c. Each insurance policy shall be placed with insurance companies that are admitted to write insurance in California and have ratings of or equivalent to A:V by A.M. Best Company or from authorized non-admitted insurance companies subject to Section 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII by A.M. Best Company.
- d. CLIENT makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover BOWMAN's liability or obligations under this Agreement.

13. Indemnification.

- a. BOWMAN shall indemnify, defend and hold harmless CLIENT from and against any and all claims, damages, losses, expenses or liabilities, including, but not limited to, reasonable attorneys' fees ("Losses"), arising out of or resulting from any patent, copyright and other infringement claim by any third party in connection with Software Products.
- b. BOWMAN further agrees if CLIENT is prevented from using the Software Product due to an actual infringement of any patent or copyright, then at BOWMAN's option and as CLIENT's sole remedy, BOWMAN shall promptly either:
 - i. Procure for CLIENT, at BOWMAN's expense, the right to continue to use the Software Product;
 - ii. Replace or modify the Software Product, at BOWMAN's expense, so that the Software Product becomes non-infringing; or
 - iii. Return CLIENT's license fees for the infringing Software Product in the event that neither (i) nor (ii) are reasonably feasible or, alternatively, procure a mutually acceptable replacement Software Product at BOWMAN's cost.

14. Limited Warranty (Software Products). WITH RESPECT TO THE SOFTWARE PRODUCTS, IN THE EVENT OF LOSS OF DATA DUE TO ERRORS OR NEGLIGENCE ON THE PART OF BOWMAN, BOWMAN WILL CORRECT PROGRAM ERRORS IN A TIMELY FASHION AT NO ADDITIONAL COST TO CLIENT, HOWEVER, CLIENT FIRST MUST PROVIDE BOWMAN WRITTEN NOTIFICATION OF ANY DEFECTS IN THE SOFTWARE PROGRAM. OTHER THAN HEREINABOVE DESCRIBED, BOWMAN MAKES NO EXPRESS OR IMPLIED WARRANTIES AND MAKES NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL BOWMAN BE LIABLE FOR INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES. BOWMAN SHALL NOT BE RESPONSIBLE FOR LOSS OF DATA NO MATTER HOW CAUSED AND INCLUDING WITHOUT LIMITATION RESULTING FROM DELAYS, NON-DELIVERIES, MIS-DELIVERIES, SERVICE INTERRUPTIONS, OR OTHER INTERRUPTIONS WHETHER CAUSED BY CLIENT OR ANY OTHER PERSON OR ENTITY.

15. Limitation of Liability. WITH RESPECT TO SOFTWARE PROGRAMS, IN THE EVENT OF LOSS OF DATA DUE TO ERRORS AND OR NEGLIGENCE ON THE PART OF BOWMAN, BOWMAN WILL CORRECT THE PROGRAM ERROR IN A TIMELY FASHION AT NO ADDITIONAL COST TO CLIENT. IN NO EVENT SHALL THE AGGREGATE OF BOWMAN'S LIABILITY UNDER THIS AGREEMENT EXCEED THE TOTAL FEES ALREADY PAID BY CLIENT TO BOWMAN PURSUANT TO THIS AGREEMENT.

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16. Conflict between Invoice/Purchase Order and Agreement. In the event of conflict between this Agreement and a purchase order or invoice issued to CLIENT in connection with the Software Products or Services, whether prepared by BOWMAN or CLIENT, this Agreement controls.

V. TRADE SECRETS; SECURITY AND CONFIDENTIALITY.

1. Trade Secret. CLIENT hereby acknowledges that the Trade Secrets are protected by civil and criminal law, are very valuable to BOWMAN, and that their use must be carefully and continuously controlled. CLIENT agrees to use a reasonable standard of diligence to ensure the confidentiality of the Trade Secrets, and will prohibit the unauthorized access to, use or duplication of any of the Trade Secrets. CLIENT agrees to provide all Trade Secrets the same security as CLIENT provides for its most confidential materials. CLIENT will not cause, permit, nor allow the Trade Secrets or any materials provided by BOWMAN to be copied, reverse engineered, decompiled, duplicated, transcribed, transferred, relied on or used to make derivative works, Modifications, or any software or system that has the "look and feel" of the software licensed herein, sold to, revealed to, or used by any other person, firm or company without prior written consent of BOWMAN. CLIENT shall not, and shall not permit any person to, download any part of the source code comprising the Software Programs nor may CLIENT modify or enhance source code or any of the materials comprising the Software Products or any materials provided to it by BOWMAN, without the prior written consent of BOWMAN. CLIENT agrees to notify BOWMAN immediately of any infringement of the Trade Secrets or the Software Products, unauthorized possession, use or knowledge of any item supplied under this Agreement by any person or organization not authorized by this Agreement to have such possession, use or knowledge, and will cooperate fully with BOWMAN in any litigation against third parties deemed necessary by BOWMAN to protect its proprietary rights. CLIENT's compliance with the above shall not be construed in any way as a waiver of BOWMAN's right to recover damages or obtain other relief against CLIENT for its negligent or intentional harm to BOWMAN's proprietary rights or for breach of contractual rights. If CLIENT attempts or allows others to attempt to use, copy, duplicate, transcribe, transfer, reverse engineer, decompile, rely on or use to make derivative works, Modifications, or any software or system that has the "look and feel" of any of the software licensed herein, or to sell to, reveal to, or permit use by a third party the items supplied by BOWMAN pursuant to this Agreement, or to download, to modify, or to enhance any part of the source code comprising the Software Programs, in a manner contrary to the terms of this Agreement or in derogation of BOWMAN proprietary rights, whether these rights are explicitly herein stated or as set and/or determined by law, or otherwise, BOWMAN shall have, in addition to any other remedies available to it at law or equity, the right to injunctive relief enjoining such actions, CLIENT hereby acknowledges that irreparable harm will occur to BOWMAN and that other remedies are inadequate.

2. Confidentiality. BOWMAN agrees that all information and data input by CLIENT in its use of the Software Programs are deemed confidential, and that no such data or information shall be disclosed by BOWMAN to any outside party, unless such information is publicly available from other than a breach of these provisions. BOWMAN agrees to take all reasonable precautions to prevent the disclosure to outside parties of such data and information, except as may be necessary by reason of legal, accounting, or regulatory requirement beyond the reasonable control of BOWMAN.

3. Publicity. Notwithstanding the foregoing paragraph, the existence of this Agreement is not confidential information subject to the foregoing paragraph. Each party may advertise the fact it has entered this Agreement. Each party may cause their web sites to link to the other party's web site, but the use of frames is prohibited.

VI. TERMINATION

1. Termination. This Agreement and the Licenses terminate upon CLIENT's breach of or default under any provision of this Agreement and upon expiration of the Term, whichever occurs first. Upon termination or expiration of this Agreement, all rights granted to CLIENT under this Agreement shall forthwith terminate and revert immediately to BOWMAN. CLIENT shall immediately discontinue all use of the Software Products, provide to BOWMAN a current list of all End Users, terminate all use of the Software Products thereof by any and all End Users, uninstall all Software Programs from its Server,

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transmit to BOWMAN all materials related to the Software Products, and return all copies of the Software Products to BOWMAN. Termination or expiration of this Agreement shall not extinguish any of the parties' obligations hereunder that by their terms continue after the date of termination or expiration. Upon termination or expiration of this Agreement, BOWMAN shall return all City Data to CLIENT in a .csv or .xml format as mutually agreed upon. "City Data" shall mean and refer to any and all information placed onto the database by CLIENT or CLIENT's End Users pursuant to this Agreement, which should be and remain the exclusive property of CLIENT or CLIENT End Users or clients thereof.

2. Cross-Default. Any breach of or default in any of (i) the terms or provisions hereof, (ii) any of the Riders, (iii) any agreement now existing or hereafter arising between BOWMAN and CLIENT, (iv) any EULA, (v) any Terms of Use Section, or (vi) any writings and/or agreements BOWMAN may require to be executed as provided herein, whether by CLIENT, End User, or a third party, shall be a default under all of the Licenses and a breach of this Agreement.

VII. OTHER PROVISIONS

1. U.S. Government Limited Rights and Restricted Rights: The Software Products are provided with RESTRICTED RIGHTS. The Software Products include software and documentation which is commercial technical data or computer data bases or commercial computer software or commercial computer software documentation, as applicable which were developed or acquired exclusively at private expense by Bowman Systems, LLC / 333 Texas Street / Shreveport, LA 71101. U.S. Government rights to use, modify, reproduce, release, perform, display or disclose these technical data or computer data bases or computer software or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) or subject to the restricted rights provision of FAR 52.227-14 (June 1987) and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements. In no event shall BOWMAN be subject to any flow down provisions required by the governmental customer unless agreed to by BOWMAN in writing.

2. Subsequent Orders/Invoices. Software Products or Services provided to CLIENT by BOWMAN subsequent to this Agreement will be governed by the terms of this Agreement and such orders will be reflected by an appropriate Rider. This Agreement governs the terms and conditions of all Software Products and Services provided by BOWMAN to CLIENT. Terms and conditions on any order form or invoice will not apply and are of no force and effect, whether written or prepared by BOWMAN or CLIENT.

3. No Third-Party Beneficiary. Nothing in this Agreement shall be construed as conferring any rights, benefits, remedies, or otherwise, on or in favor of any third-party, including without limitation any End User.

4. Independent Contractor Status. It is expressly understood and agreed that BOWMAN is an independent contractor at all times and for all purposes hereunder. Officers, employees, or representatives of BOWMAN shall not be deemed in any way to be and shall not hold themselves out as employees, servants, representatives, or agents of CLIENT, and shall not be entitled to any fringe benefits of CLIENT. BOWMAN shall be responsible for paying payroll wages, for the withholding and payment of all income and social security taxes to the proper Federal, State, and local governments, and for providing workers' compensation and unemployment insurance of BOWMAN.

5. Complete Agreement. This Agreement and the Riders that may from time to time be signed by the parties pursuant hereto contain the entire agreement between the parties with respect to the transactions contained herein and supersedes all prior proposals and understandings, both oral and written. No party hereto has relied on any statement, representation or promise of any other party or of an officer, agent, employee or attorney for the other party in entering into this Agreement except as expressly stated herein. This Agreement may be amended, modified or altered only by a written instrument signed by all parties hereto.

6. Headings. The headings of each paragraph contained herein are provided only for convenience and shall not be deemed controlling.

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7. **Binding.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective assigns and successors.

8. **Assignability.** This Agreement shall not be transferable or assignable by CLIENT or BOWMAN without the prior written consent of the other party.

9. **Governing Law.** This Agreement shall be governed by, construed and enforced under, and subject to, the laws of the State of California. If any of the provisions of this Agreement are invalid under any applicable statute or rule of law, they are, to that extent, deemed omitted. Such omission does not change the intent or binding nature of any or all of the rest of this Agreement, which shall be in full force and effect.

10. **Force Majeure.** BOWMAN shall not be liable to CLIENT or any other person or entity for any loss or damage for delay in performance, or for nonperformance, due to causes not reasonably within its control, such as, but not limited to, an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, public disaster, lightning, fire, storm, flood or other act of nature, explosion, judicial orders/decrees, governmental laws/regulations, governmental action, governmental delay, restraint or inaction, unavailability of equipment, and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of BOWMAN.

11. **Notice.** Any notice or approval required by this Agreement shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid, addressed to BOWMAN at the address first stated above, and to CLIENT at 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy to the City Homeless Services Director at the same address. Notice of change of address shall be given in the same manner as stated for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever occurs first.

12. **Counterparts.** Two (2) duplicate originals of this Agreement are executed with each party retaining one (1) copy.

13. **Severability.** The invalidity of any one or more of the provisions of this Agreement shall not affect the remaining portions of this Agreement, and in case of any such invalidity, this Agreement shall be construed as if the invalid provisions had not been inserted.

14. **Additional General Requirements, Reservations and Conditions of City of Long Beach Contracts.**

- a. BOWMAN is authorized to do business in California and has been an established legal entity for more than two (2) years.
- b. In connection with performance of this Agreement and subject to applicable rules and regulations, BOWMAN shall not discriminate against any employee or applicant for employment because of race, religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or disability. BOWMAN shall ensure that applicants are employed, and that employees are treated during their employment, without regard to these bases. These actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- c. BOWMAN shall maintain compliance with current HUD HMIS Data and Technical Standards.
- d. BOWMAN shall be in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH Act).
- e. This Agreement shall be for a 3-year term but is contingent upon CLIENT's receipt of funds from HUD during an annual grant renewal process. CLIENT reserves the right to refuse payment of any invoices until such time as it receives deliverables and contingent upon HUD funding.
- f. CLIENT's obligation to pay any sum for any fiscal year shall be contingent upon receipt of federal funds and upon appropriation by the City Council of the City of Long Beach of

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website: www.bowmansystems.com



the necessary funds for such payment by CLIENT in each fiscal year during the term of contracts awarded. In the event that the City Council or the Federal government fails to appropriate the necessary funds for any fiscal year, the contracts awarded for that period will not be funded and/or renewed.

- g. BOWMAN shall allow representative of CLIENT or HUD to inspect facilities, which are used in conjunction with this Agreement.
- h. BOWMAN shall make available to representatives of CLIENT or HUD upon reasonable notice, inspection of documentation related to the service funded by CLIENT/HUD funded contracts.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the latest date hereinafter subscribed.

Bowman Systems L.L.C.
333 Texas Street, Suite 300
Shreveport, Louisiana 71101
90802

(BOWMAN)
By: *Robert P. Bowman*
Robert Bowman
Title: President

Date: 10/1/2011

City of Long Beach
333 West Ocean Boulevard
Long Beach, California

(CLIENT) Assistant City Manager
By: *Patrick H. West*
Patrick H. West
Title: City Manager

Date: 11-22-11 EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

APPROVED AS TO FORM

11/10, 2011
[Signature]
By: _____

Attachment "A"

ServicePoint Pricing Table

City of Long Beach, California

Renewal Period: August 1, 2011 - July 31, 2014

NOTE: Renewal based on current number of licenses (101 as of 06/15/2011). Contracted amounts listed below will be affected by any purchases of additional licenses (see * below).

ServicePoint User License *	101	Number of ServicePoint User Licenses on the ServicePoint Site.
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Annual/One-time Fees		
ServicePoint Software Maintenance, Enhancement, & Customer Support \$90/license/year	\$9,090.00	ServicePoint Software Maintenance, Enhancement, & Customer Support includes bug fixes, license maintenance, product enhancements, version upgrades, ongoing global system additions, and telephone, e-mail and self-service portal support of system administrators. (Includes 60 hours Customer Support per year. Additional support available at \$125.00 per hour.)
Bowman Shared Hosting Service \$180/license/year	\$18,180.00	Bowman Shared Hosting Service provides shared hosting, maintenance, monitoring, and administration for Bowman leased servers located in the Bowman datacenter. The customer's ServicePoint application and databases are placed on servers supporting other clients.
** Report Gallery Access With Report Creation Ability \$160/license/year	\$480.00	Provides access to Web Intelligence Panel within Reporting Tool; Allows 3 users to create and store reports. One license with access to Web Intelligence Panel is provided to each site automatically.
** Regular Report Gallery Access \$80/license/year	\$240.00	Provides 3 users access to view reports previously created by users with access to Web Intelligence.
Report Gallery Access Bandwidth Fee \$10/license/year	\$60.00	Bandwidth fee per named user with Report Gallery access.
Total Annual/One-time Fees	\$28,050.00	

Flat Fees		
AIRS Taxonomy License, Integration & Update Fee	\$450.00	AIRS Taxonomy is a national standard classification and requires an InfoLine (AIRS copyright holder) License Fee and a Bowman Integration & Update Fee. (Required)
SSL Certificate	\$400.00	This certificate ensures secure transmission of data over the internet. (Required)
ServicePoint Training Site Annual License & Maintenance	\$3,000.00	A ServicePoint Training Web Site provides an implementation specific site for training purposes and is an important part of any ServicePoint installation. This service provides optional ongoing training site operation, including software updates in concert with the production site.
ServicePoint Source Code Escrow	\$1,300.00	ServicePoint Source Code Escrow service provides conditional access to ServicePoint programming code.
Total Flat Fees	\$5,150.00	

Grand Total	\$33,200.00
-------------	-------------

* Unlimited additional user licenses may be added to the system. For additional licenses, the following fees apply:	
One-time Fees: ServicePoint User License: \$225/license	Recurring Fees: ServicePoint Software Maintenance, Enhancement, & Customer Support: \$90/license/year Bowman Shared Hosting Service: \$180/license/year Report Gallery Access With Report Creation Ability : \$160/license/year Regular Report Gallery Access Fee: \$80/license/year Report Gallery Access Bandwidth Fee: \$10/license/year

Professional Services (Optional)

<p>Consulting Services Services per Hour: \$200 Services per Day (Minimum Purchase of 2 Days): \$1,500 (plus Travel Expenses)</p> <p>Training Services On Site Training per Day for ServicePoint (Minimum Purchase of 2 Days): \$1,500 (inclusive of expenses) On Site Training per Day for Basic Report Gallery (Minimum Purchase of 2 Days): \$1,500 (inclusive of expenses) On Site Training per Day for Advanced Report Gallery (Minimum Purchase of 2 Days): \$2,500 (inclusive of expenses)</p> <p>Data Conversion, Custom Reports, & Custom Programming Statement of Analysis: \$1,875 Statement of Work: \$125/hour for actual time expended on the project (\$150/hour will be charged for expedited services.) (The cost of the Statement of Analysis will be applied to the final Statement of Work billing upon completion of the project.)</p>
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ATTACHMENT **A**
 PAGE **1** OF **1** PAGES

RPB

Attachment "B"

SERVICE LEVEL PLAN

INTRODUCTION

Technical Support is regarded by Bowman Systems management as a pivotal part of our business success. The Technical Support department is located at our main development facility, along with software development, quality assurance, and the documentation divisions, all providing the Technical Support Specialists with easy access to these groups.

Our Technical Support Mission is to "Help our customers make the best use of our software products through effective and responsive support, active advocacy, and a broad and flexible range of self-help resources." We do this through the following means:

- We make it easy for our customers to receive help by offering telephone and electronic support. The Customer Self Service portal allows customers to easily submit application questions, comments, or problems directly via the internet. Customers are encouraged to report their issues in the manner in which they feel most comfortable and are assured their requests will be dealt with efficiently and effectively.
- We provide a variety of self-help resources, all included in the support package. We even notify users if we find bugs in our application software, and in many cases, assist them before a problem arises. A full range of electronic support services gives users access to almost all resources used by our Technical Support staff.
- Technical resources available to our Technical Support staff enable us to provide reliable and responsive support. Our comprehensive Case Management system, fully developed in-house, is the foundation that helps us achieve extremely high levels of responsiveness to product issues. Our phone system enables us to route incoming calls with optimal efficiency and minimize hold times. Our data warehouse consolidates Case Management data and allows Bowman management to respond quickly to any changing conditions.
- Technical Support actively participates in software development, in both the design and testing phases. Users can participate in future development of Bowman software through a variety of feedback mechanisms. The Customer Council, a committee of key users of Bowman software, provides vital feedback used in our continuous effort to improve Bowman products for the future.
- Bowman has a strong commitment both to Technical Support and our Technical Support Specialists. We regard Technical Support as a long-term career, and offer extensive product training and career enhancements, all resulting in a low turnover rate among the Support Specialists.

PHONE SUPPORT:

Bowman Systems shall provide toll free telephone support during the hours of 8:00 AM to 6:00 PM Central Time, Monday through Friday, exclusive of national holidays. The toll free number is (888) 580-3831 ext.2. Additionally, the designated Customer Support Specialist's direct number will be provided upon implementation.

EMERGENCY SUPPORT LINE

For after hours emergencies, clients have access to an emergency help line monitored by multiple staff members.

E-MAIL SUPPORT

Bowman Systems shall provide e-mail support during the hours of 8:00 AM to 6:00 PM Central Time, Monday through Friday, exclusive of national holidays. For after hours emergencies, an alternative e-mail, emergency@bowmansystems.com will be provided and monitored.

CUSTOMER SELF-SERVICE PORTAL

Bowman Systems provides a web-based, secured, customer self-service portal as part of our maintenance agreements. This system provides clients with immediate access to Bowman's knowledge base, documentation, resources and cases. The system is available 24x7.

CASE MANAGEMENT SYSTEM

Bowman Systems utilizes a case tracking system to log all client support incidents. The system assigns an ID to the case and allows all pertinent information to be tracked until resolution. Case information is available to clients through the self-service portal.

ELECTRONIC SELF-HELP TOOLS

Our World Wide Web site (<http://www.bowmansystems.com>) provides a complete set of support tools. In addition to reporting problems to Technical Support, users can:

- Search our knowledge base, FAQs, technical documents, and system requirements
- Easily download relevant documentation
- Enter suggestions for software enhancements
- Obtain documentation on all of our technical support services
- Obtain information about local, regional, and international user group activities

RESPONSE TIMES

Bowman Systems strives to provide optimum response times to client requests. The following grid indicates service goals. Bowman Systems may establish different procedures for responding to different types of problems.

SEVERITY LEVEL	CONDITION IMPACT	INITIAL FOLLOW-UP	FREQUENCY OF CORRESPONDENCE
Severity One	<p><i>Critical Business Impact</i></p> <p>A critical Bowman Systems production system is down or does not function at all, and there is no circumvention for the problem; a significant number of customers are affected, and a production business system is inoperable.</p>	<4 hours during normal business hours	Every business day, or as agreed upon by client and Bowman, until issue is resolved.
Severity Two	<p><i>Significant Business Impact</i></p> <p>A component of Bowman Systems production system is not performing; creating a significant operational impact.</p>	<8 hours during normal business hours	Every 2 business days, or as agreed upon by client and Bowman until issue is resolved.
Severity Three	<p><i>Minimal Business Impact</i></p> <p>A component of Bowman Systems production system is not performing as documented; unexpected results; circumventable problems; moderate or minor operational impact</p>	<1 working day	Every 5 business days
Severity Four	<p><i>No Business Impact</i></p> <p>Usage questions; clarification of documentation</p>	< 1 working day	Every 5 business days
Severity Five	<p><i>Requests</i></p>	< 5 working days	Depends upon issue.

	Suggestions; requests for new product features and enhancements.		
<p>*For problems that are assigned to a specialist, "initial follow-up" is defined as the time between when the problem is initially reported and the specialist contacts the customer. For problems that require further research by the consultant who initially received the problem, "initial follow-up" is defined as the time between the initial contact with the consultant and a follow-up call.</p> <p>**Does not include weekend or other non-business days</p>			

ESCALATION PROCEDURE

Upon contract signing, a Customer Support Specialist (CSS), will be designated to the account. All support incidents should be directed through the CSS. In the event the CSS does not provide response outlined in the grid above, the client should follow the following procedure.

Escalation 1: If appropriate response is not provided by designated CSS, then client should contact main support center phone extension or send e-mail to support@bowmansystems.com which is sent to all CSS'.

Escalation 2: If appropriate response is not provided after contacting main support center, then client should contact Support Manager, Joey Flannery at ext. 119 or jflannery@bowmasystems.com.

Escalation 3: If appropriate response is not provided after contacting support manager, then client should contact General Manager, Josh Johnson at ext. 131 or josh@bowmansystems.com.

Escalation 4: If appropriate response is not provided after contacting General Manager, then client should contact Vice President of Administration, Andrew Twyman at ext. 101 or atwyman@bowmansystems.com.

BACKUP PROCEDURE AND PROVISIONS

All client data is backed-up online and stored on a central file server repository for approximately five (5) days. Each night a tape backup is made of these client databases and secured in a bank vault. We rotate through approximately 1 month of backup tapes.

For power outage, our systems are backed up via APC battery back-up units, which are also in turn connected via generator-backed up electrical circuits. For a system crash, Premium Disaster Recovery clients can be brought back online within 3-4 hours with no data loss. For Non-Premium Disaster Recovery clients can be brought back online within 6-8 hours with

potential for some small data loss (data that was entered between the last backup and when the failure occurred) if a tape restore is necessary. If the failure is not hard drive related these times would possibly be much less since the drives themselves can be repopulated into a standby server.

Premium Disaster Recovery Clients: A remote DR location is maintained where a duplicate, up-to-date copy of a client's live site and data is maintained on a 24x7x365 basis. Upon recognition of a system failure, failover would be enabled to the DR site, enabling end users to continue activity with little down time and very little, if any, loss of data.

Standard Recovery: All customer site databases are stored online (premium or standard), and are readily accessible for approximately five (5) days; tape backups are kept for approximately one (1) month. Upon recognition of a system failure, a site can be copied to a standby server, and a database can be restored, and site recreated within 3-4 hours if online backups are accessible. A tape restoration can be made within 6-8 hours. On-site backups are made once daily and a restore of this backup may incur some data loss between when the back-up was made and when the system failure occurred.

Bowman does not make the full backup tapes available directly to the customer due to the proprietary nature of the database design. If the data within the ServicePoint database is required beyond reporting and download via the application, a request can be made to receive a data extract of data. The extract can be provided in .csv or XML format for costs to be determined at the time of the request.

Attachment "C"



End User Agreement

Important-Read Carefully: This End-User Agreement ("EULA") is a legal agreement between you (either an individual or a single entity, "CLIENT") and Bowman Systems (Bowman) for use of ServicePoint ("Software Product"). The Software Product includes programming code and associated online documentation. By using the Software Product, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, Bowman is unwilling to license the Software Product to you. In such an event, you may not use or copy the Software Product, and you should promptly contact Bowman for instructions on uninstalling and return of unused product for a refund.

Software Product License

The Software Product is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software Product is licensed, not sold.

NOW, THEREFORE, in consideration of the premises and in further consideration of the performance of the terms and provisions herein contained, Bowman and CLIENT do hereby contract and agree as follows:

- (1) **Term.** CLIENT agrees to the contract for the length of the terms stated in the written and signed contract between CLIENT and Bowman, beginning upon acceptance of this agreement by signature. This agreement will automatically renew for successive 12-month periods unless cancelled or modified within thirty (30) days of the end of the term. Any modifications must be submitted in writing to the other party and agreed to by the other party.
- (2) **Grant of License.** This EULA grants you the following rights:
 - a. You may use one copy of the Software Product
 - b. User licenses must be obtained for each individual person using the Software Product. Sharing of user licenses is expressly prohibited.
- (3) **Warranties.** In the event of loss of data due to errors and or negligence on the part of Bowman, Bowman will correct program error in a timely fashion at no additional cost to CLIENT. Other than herein above described, Bowman makes no express or implied warranties and makes no implied warranty of merchantability or fitness for a particular purpose. In no event shall Bowman be liable for indirect, consequential, punitive or special damages. Bowman shall not be responsible for loss of data resulting from delays, non-deliveries, miss-deliveries, service interruptions, or other interruptions caused by CLIENT or any other person or entity.
- (4) **Trade Secret.** CLIENT hereby acknowledges that the source code, graphics, and html related to services and products provided by Bowman under this Agreement constitutes a trade secret of Bowman, and as such is protected by civil and criminal law, is very valuable to Bowman, and that its use must be carefully and continuously controlled. CLIENT agrees to use the highest standard of diligence to ensure the confidentiality of the source code, and will prohibit the unauthorized access to, use or duplication of any of the source code. CLIENT agrees to provide all source codes the same security as CLIENT provides for its most confidential materials. CLIENT will not cause, permit, nor allow the code or materials provided by Bowman to be copied, modified, duplicated, transcribed, sold to, revealed to, or used by any other person, firm or company without prior written consent of Bowman. CLIENT agrees to notify Bowman immediately of the unauthorized possession, use or knowledge of any item supplied under this Agreement by any person or organization not authorized by this Agreement to have such possession, use or knowledge, and will cooperate fully with Bowman in any litigation against third parties deemed necessary by Bowman to protect its proprietary rights. CLIENT's compliance with the

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website: www.bowmansystems.com



above shall not be construed in any way as a waiver of Bowman's right to recover damages or obtain other relief against CLIENT for its negligent or intentional harm to Bowman's proprietary rights or for breach of contractual rights. If CLIENT attempts or allows others to attempt to use, copy, duplicate, transcribe, or convey the items supplied by Bowman pursuant to this Agreement, in a manner contrary to the terms of this Agreement or in derogation of Bowman proprietary rights, whether these rights are explicitly herein stated, determined by law, or otherwise, Bowman shall have, in addition to any other remedies available to it at law or equity, the right to injunctive relief enjoining such actions, CLIENT hereby acknowledges that irreparable harm will occur to Bowman and that other remedies are inadequate.

- (5) **Compliance with Laws.** CLIENT assumes all responsibility in assuring compliance with all regulations relating to CLIENT's use of the product and services.
- (6) **U.S. Government Restricted Rights.** The Software Product and documentation are provided with Restricted Rights. Use, duplication, or disclosure by the Government is subject to restrictions set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Bowman Systems L.L.C. / 333 Texas Street, Suite 300 / Shreveport, LA 71101.
- (7) **Confidentiality.**

Bowman and CLIENT each agree that all information pertaining to the terms and conditions of this Agreement and CLIENT Proposal, whether before the effective date or during the term of this Agreement, shall be received in strict confidence, and that no such information shall be disclosed by the recipient party, its agents or employees without prior written consent of the other party, unless such information is publicly available from other than a breach of these provisions. Each party agrees to take all reasonable precautions to prevent the disclosure to outside parties of such information, except as may be necessary by reason of legal, accounting or regulatory requirement beyond the reasonable control of Bowman and CLIENT.
- (8) **Use of Server (for CLIENT's hosted application).** BOWMAN will host CLIENT's application in Bowman's data center on equipment provided by BOWMAN. Data input by CLIENT is property of CLIENT. Bowman's server may not be used for illegal purposes, or in support of illegal activities. Activities which are prohibited include, but are not limited to unauthorized copying of material, transmittal of chain letters, threatening bodily harm or property damage of individual groups, making fraudulent offers of products, items, or services originating from CLIENT's account, attempting to access the accounts of others or attempting to penetrate Bowman's systems whether or not the intrusion results in loss of data, or distributing viruses or bulk e-mail through the Bowman System.
- (9) **Modification.** CLIENT may not modify source code without written consent of Bowman.
- (10) **Limitation of Actions.** No action arising out of this Agreement may be brought by CLIENT or Bowman more than two (2) years after the cause of action has occurred.
- (11) **Headings.** The headings of each paragraph contained herein are provided only for convenience and shall not be deemed controlling.
- (12) **Binding.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective assigns and successors.
- (13) **Assignability.** This Agreement shall not be transferable or assignable by CLIENT or Bowman without the prior written consent of the other party.

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website: www.bowmansystems.com



- (14) **Governing Law.** This Agreement shall be governed by, construed and enforced under, and subject to, the laws of the State of California. If any of the provisions of this Agreement are invalid under any applicable statute or rule of law, they are, to that extent, deemed omitted. Such omission does not change the intent or binding nature of any or all of the rest of this Agreement, which shall be in full force and effect.
- (15) **Limitation of Liability.** In the event of loss of data due to errors and or negligence on the part of Bowman, Bowman will correct the program error in a timely fashion at no additional cost to CLIENT. Other than as herein above described, Bowman shall in no event have any liability to CLIENT for losses sustained or liabilities incurred except as may result from gross negligence or willful misconduct. Further, any liability of Bowman for any loss, damages, or costs hereunder shall be limited to the actual direct damages incurred by CLIENT, but in no event shall the aggregate of liability exceed the total fees paid by CLIENT to Bowman under paragraph 3 of the Master Forma Agreement, nor shall any amount of liability include any indirect, consequential, punitive or special damages incurred by CLIENT. Bowman shall not be responsible for loss of data resulting from delays, non-deliveries, mis-deliveries, service interruptions, or other interruptions caused by CLIENT or any other person or entity.
- (16) **Force Majeure.** Bowman shall not be liable to CLIENT or any other person or entity for any loss or damage for delay in performance, or for nonperformance, due to causes not reasonably within its control, such as, but not limited to, an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, public disaster, lightning, fire, storm, flood or other act of nature, explosion, judicial orders/decrees, governmental laws/regulations, governmental action, governmental delay, restrain or inaction, unavailability of equipment, and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of Bowman.
- (17) **Notice.** Any notice or approval required by this Agreement shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid, addressed to BOWMAN at the address first stated above, and to CLIENT at 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy to the City Homeless Services Director at the same address. Notice of change of address shall be given in the same manner as stated for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever occurs first.
- (18) **Termination.** Without prejudice to any other rights, Bowman may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such an event, you must destroy all copies of this Software Product and all of its component parts.
- (19) **Taxonomy.** The structure of the Taxonomy index and definitions of the terms contained herein were originally published in A Taxonomy of Human Services: A Conceptual Framework with Standardized Terminology and Definitions for the Field by the Information and Referral federation of Los Angeles County, Inc., 3035 Tyler Ave, El Monte, CA 91731; Copyright 1983, 1987, 1991. No part of this listing of human services terms and definitions may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electrical, mechanical, photocopying, recording or otherwise without the prior written permission of the Information and Referral Federation of Los Angeles County, Inc.
- (20) **Severability.** The invalidity of any one or more of the provisions of this Agreement shall not affect the remaining portions of this Agreement, and in case of any such invalidity, this Agreement shall be construed as if the invalid provisions had not been inserted.

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website: www.bowmansystems.com



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C-2011-000999 - Attachment C

08/01/2011 - 07/31/2014

ATTACHMENTC.....
PAGE4..... OF4..... PAGES

Attachment "D"



Rider to Software and Services Master Agreement

ServicePoint®

Software Product. The Software Program licensed for use by CLIENT from BOWMAN is ServicePoint®.

Fees and Services. The Fees and Services are described on the Pricing Table attached hereto as Exhibit 1.

EULA and Restrictions on Use Section. The form of the EULA required and the content of the Restrictions on Use Section are set forth on Exhibits 2 and Section IV. 3. in the Software and Services Master Agreement, respectively.

End Users. The number of End Users permitted by the License is as set forth on Exhibit 1. Additional End User licenses may be purchased during the Term at the then BOWMAN Published Pricing.

- a. **Number of End Users.** CLIENT is permitted to authorize no more than the number of End Users for which CLIENT has paid license fees to BOWMAN.
- b. **User name and password.** Each End User is an Agency End User and each must be issued a unique user name and password. CLIENT is responsible for issuing each End User a unique user name and password and for maintaining that information. Sharing of user name and password by or among more than one individual expressly is prohibited. Each individual Named User must be specifically identified as the sole holder of a user name and password. User names and passwords may not be transferred from one individual to another unless the original end user no longer requires, and is no longer permitted, access to the Software Program.
- c. **Lists of end users.** CLIENT will maintain current lists of all End Users by name, employer or agency, work address, work telephone number, email, username and password and provide the same to BOWMAN on a quarterly basis and at any time upon written request for the same made by BOWMAN.

Agreed to and executed on the dates hereinafter set forth.

BOWMAN Systems L.L.C.
333 Texas Street, Suite 300
Shreveport, Louisiana 71101
(BOWMAN)

City of Long Beach, California
2525 Grand Avenue
Long Beach, California 90815
(CLIENT)

By: [Signature]
Robert Bowman
Title: President
Date: 10/28/11

APPROVED BY CITY
11/10/11
[Signature]

By: [Signature] Assistant City Manager
Title: City Manager
Date: 11.22.11

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER

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toll-free: 888.580.3831 voice: 318.213.8780 fax: 318.213.8784
website: www.bowmansystems.com

Attachment "E"



Rider to Software and Services Master Form Agreement

Report Gallery Restricted License Agreement

This is a Rider to Software and Services Master Form Agreement dated effective the 1st day of August, 2011.

Term and Fees. The Fees are described on the current ServicePoint® Pricing Table or the current ServicePoint® Revised Pricing Table, and are due upon execution of this Rider.

Software Product. The Software Program licensed for use by CLIENT from BOWMAN is the Business Objects Enterprise Premium XI / Web Intelligence XI, herein referred to as Report Gallery. It is understood that Report Gallery is licensed by BOWMAN from a third party and that BOWMAN is authorized to license its use to CLIENT subject to the terms and conditions hereof.

License. The License herein granted is a limited, restricted, non-perpetual, nontransferable, non-exclusive license to use Report Gallery in connection with CLIENT's currently licensed use of ServicePoint®, for CLIENT's internal purposes only in the course of CLIENT's social services operations and purposes, subject to the terms and conditions hereof. The License granted herein shall terminate upon termination of this Rider or of the Agreement whether through the expiration of the operative term, upon breach by CLIENT of any of the terms or conditions hereof, of the Agreement, or otherwise.

Access to Software. BOWMAN, its agents and/or employees shall have access to inspect or observe CLIENT's use of the Software Product at reasonable times upon first giving notice to CLIENT of BOWMAN's intent to perform such inspection.

Restrictions on Use. CLIENT may use Report Gallery only for internal purposes of creating reports based solely on data and information CLIENT maintains or creates through its currently licensed use of ServicePoint® and only if CLIENT is not in default under the Agreement. CLIENT may not (1) rent Report Gallery or otherwise make it available to third parties, (2) use Report Gallery in violation of third party rights, or (3) use Report Gallery for any purpose other than herein stated. Report Gallery may only be used and/or otherwise connected to a single licensed installation of ServicePoint® and may not be combined with any other installations, products, or applications without the express written consent from BOWMAN.

Copies. CLIENT may not copy ServicePoint® or Report Gallery, except as permitted herein or as authorized by applicable law. CLIENT may not copy the written materials accompanying Report Gallery. All rights not explicitly granted in this license agreement are reserved.

Report Gallery End Users and data and information. CLIENT is responsible for all data and all data generation, gathering, maintenance, translation, transfer, input, management, and all substance of any reports it generates through use of Report Gallery. CLIENT is responsible for management of all End Users of Report Gallery. End Users are permitted only as expressly set forth below.

a. Number of End Users. CLIENT is permitted to authorize no more than the number of Users of Report Gallery to which CLIENT has paid license fees to BOWMAN.

1. CLIENT must agree to any additional terms and conditions and provide any additional writings and agreements that BOWMAN may, in its sole unfettered discretion, deem necessary to protect its proprietary interests or otherwise, and executed and signed by CLIENT and/or the proposed End User, as BOWMAN may require.
2. BOWMAN reserves the right to refuse to consent to any proposed End User for any reason and to revoke any Report Gallery EULA, in its sole and unfettered discretion.
3. CLIENT represents, warrants, and guaranties BOWMAN that each proposed and each approved Report Gallery End User shall use Report Gallery only

333 Texas Street, Suite 300 Shreveport, LA 71101
toll-free: 888.580.3831 voice: 318.213.8780 fax: 318.213.8784
website: www.bowmansystems.com



within the scope of the license herein granted CLIENT, and CLIENT shall be responsible for ensuring that such End Users use Report Gallery in full compliance with the terms and conditions hereof.

b. User name and password. Each End User must be issued a unique user name and password. CLIENT is responsible for issuing each End User a unique user name and password and for maintaining that information. Sharing of user name and password by or among more than one individual expressly is prohibited. Each individual Named User must be specifically identified as the sole holder of a user name and password. User names and passwords may not be transferred from one individual to another unless the original end user no longer requires, and is no longer permitted, access to the Software Program.

Trade Secret and Stipulated Damages. Report Gallery is comprised of software programs that BOWMAN has licensed for use from a third party and pursuant to which BOWMAN is authorized to license its use by CLIENT subject to the terms and conditions hereof, and it, in all of its forms, including source code, is very valuable to such person and crucial to its ability to remain competitive in the data management software industry. CLIENT shall not disclose, and shall not permit any of its employees, or third party contractors or agents to disclose, any part of Report Gallery in any form or format to any person who has not executed in favor of BOWMAN a non-disclosure and confidentiality agreement on the terms and conditions BOWMAN may, in its sole discretion from time to time, prescribe and require.

Reporting. CLIENT consents and understands that BOWMAN shall report to the third party from whom BOWMAN has permission to grant this license that CLIENT has entered into this Rider and the Agreement, and shall provide CLIENT's name, email, address, and other contact information, together with the name, email, address, and other contact information of each Report Gallery End User.

NO LICENSOR WARRANTY. Report Gallery is limited to "out of the box" functionality and is licensed for use "AS IS" WITHOUT WARRANTY OF ANY KIND OR NATURE WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR AS TO FITNESS FOR A PARTICULAR PURPOSE OR INTENDED USE. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES. BOWMAN SHALL NOT BE RESPONSIBLE FOR LOSS OF DATA NO MATTER HOW CAUSED AND INCLUDING WITHOUT LIMITATION RESULTING FROM DELAYS, NON-DELIVERIES, MIS-DELIVERIES, SERVICE INTERRUPTIONS, OR OTHER INTERRUPTIONS UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BOWMAN OR ITS LICENSORS.

Assumption of Liability and Indemnification. EXCEPT AS OTHERWISE SET FORTH HEREIN, CLIENT EXPRESSLY ASSUMES ANY AND ALL RESPONSIBILITY AND LIABILITY FOR ITS USE OF REPORT GALLERY, INCLUDING ANY PROBLEMS, PROGRAMMING ERRORS, DAMAGES, OR OTHER INJURIES, THAT BOWMAN MAY INCUR OR ACCRUE IN CONNECTION WITH CLIENT'S USE OF REPORT GALLERY UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BOWMAN OR ITS LICENSORS. CLIENT SHALL INDEMNIFY AND HOLD BOWMAN HARMLESS FROM ANY AND ALL LIABILITY AND DAMAGES OF WHATSOEVER NATURE ARISING FROM ITS USE OF THE REPORT GALLERY UNLESS RESULTING FROM BOWMAN'S OR ITS LICENSORS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. CLIENT SHALL BE RESPONSIBLE AND LIABLE FOR ANY AND ALL COSTS, EXPENSES, ATTORNEYS FEES, AND DAMAGES, OF WHATEVER NATURE THAT BOWMAN MAY INCUR OR ACCRUE AS A RESULT OF CLIENT'S USE OF REPORT GALLERY, INCLUDING THOSE INCURRED BY BOWMAN FOR PURPOSES OF ENFORCING THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND ANY THIRD PARTY CLAIM MADE AGAINST BOWMAN ARISING OUT OF CLIENT'S USE OF REPORT GALLERY, UNLESS RESULTING FROM BOWMAN'S OR ITS LICENSORS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. NOTWITHSTANDING ANYTHING ELSE SET FORTH IN THE AGREEMENT, BOWMAN WILL FULLY INDEMNIFY AND DEFEND CLIENT FOR ANY AND ALL CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT RESULTING FROM CLIENT'S USE OF REPORT GALLERY IN COMPLIANCE WITH THIS AGREEMENT.

333 Texas Street, Suite 300 Shreveport, LA 71101
toll-free: 888.580.3831 voice: 318.213.8780 fax: 318.213.8784
website: www.bowmansystems.com



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the latest date hereinafter subscribed.

BOWMAN Systems L.L.C.
333 Texas Street, Suite 300
Shreveport, Louisiana 71101
(BOWMAN)

City of Long Beach, California
2525 Grand Avenue
Long Beach, California 90815
(CLIENT)

Signed by

[Signature]

Robert P. Bowman, President

10/28/11
Date

Signed by

[Signature] Assistant City Manager

[Signature] **EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.**

11-22-11
Date

APPROVED BY THE CITY

11/10
[Signature]

333 Texas Street, Suite 300 Shreveport, LA 71101
toll-free: 888.580.3831 voice: 318.213.8780 fax: 318.213.8784
website: www.bowmansystems.com

C-2011-000999 - Attachment E

08/01/2011 - 07/31/2014

ATTACHMENT E
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Attachment "F"

SOURCE CODE ESCROW AGREEMENT

This **SOURCE CODE ESCROW AGREEMENT** is effective, by and between Bowman Systems L.L.C. (Contractor) and City of Long Beach, California (Licensee) and Capital One Bank, Shreveport, Louisiana (Bank—Escrow Agent).

Whereas, the Contractor is the owner of certain software ServicePoint™ and;

Whereas, the Licensee has the right to use ServicePoint™ in its object code form pursuant to this agreement between Contractor and Licensee; and

Whereas, the Contractor and Licensee desire to create a specific means by which the Licensee shall have access to the Application Software source code held in trust by Bank, as identified in this agreement in the event that Contractor commits certain defaults as hereinafter set forth.

Now therefore, in consideration of the mutual promises contained herein, the parties agree as follows:

1. Escrow Agent Promptly before or at final acceptance of the ServicePoint™ system software and Contractor's other obligations and services, as set forth in this agreement, the Contractor shall deposit at Bank, one (1) copy of the application source code.
2. Revisions Promptly after the Contractor makes substantial changes to ServicePoint™ licensed to Licensee, Contractor shall deposit one (1) copy of the revised source code with Bank.
3. Trust Relationship Bank, acting as escrow agent, shall hold title to all copies of the ServicePoint™ application source code deposited with it in trust, solely for the purposes specified in this agreement.
4. Defaults Bank is hereby directed by the Contractor to immediately deliver to the Licensee, at no charge to the Licensee, ServicePoint™ source code deposited in the event that the Contractor commits any of the following defaults:
 - a. Enters into any voluntary or involuntary receivership arrangement or other insolvency procedures; or
 - b. Permanently discontinues the business of licensing and maintaining the Application Software, or
 - c. Fails after written notice specifying a material default to commence efforts to cure the material default and continue said efforts until a reasonable cure is achieved.
5. Ownership It is understood that ownership of the ServicePoint™ application source code at all times belongs solely to the Contractor and that any release to the Licensee of the source code copy held in trust by Bank is only made as an

accommodation to the Licensee and nothing hereby shall be deemed to vest any ownership hereof in the Licensee.

6. Restrictions During any period of time in which the source code is in the possession of the Licensee, it is agreed that it shall be used only by Licensee at and only at those facilities where its use is permitted by this agreement, shall be used only for support of ServicePoint™ and shall not be duplicated, sold or licensed to others or marketed or disclosed in any manner.
7. Duties of Bank Bank as Escrow Agent shall hold the deposited copies of source code in a secure place and shall not disclose or release it to any third party or use it for any purpose, except as specifically permitted herein. Upon termination of this agreement, any source code held by Escrow Agent and not released to Licensee shall be returned to Contractor. Contractor and Licensee shall provide Bank with joint notice of any termination.
8. Payment Contractor agrees to pay Bank for Bank's services hereunder.
9. Modifications This Escrow agreement shall not be revoked, rescinded or modified as to any of its terms and conditions except by consent in writing by the parties hereto.

CONTRACTOR

Bowman Systems L.L.C.
333 Texas Street, Suite 300
Shreveport, Louisiana 71101-5304

R.P.B.
Authorized Signature/Date
Robert P. Bowman, President
Printed Name and Title

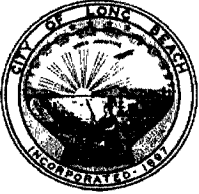
J. Philip Stephen
Witness
Lisa E. Allen
Witness

ESCROW AGENT

Glenda Gregory 11/1/11
Authorized Signature/Date
GLENDIA GREGORY
Army Unit President
Printed Name and Title

Rice Cook
Witness
John Doughty
Witness

Attachment "G"



CITY OF LONG BEACH

DEPARTMENT OF HEALTH AND HUMAN SERVICES

2525 GRAND AVENUE • LONG BEACH, CALIFORNIA 90815 • (562) 570-4000 • FAX: (562) 570-4049

Health Information In Compliance With the Health Insurance Portability And Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH Act)

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is made and entered as of August 1, 2011 by and between Bowman Systems L.L.C., a [corporation, partnership, individual or sole proprietor dba], whose business address is 333 Texas St., Suite 300, Shreveport, Louisiana 71101 (hereinafter referred to as "Business Associate"), and the CITY OF LONG BEACH, a municipal corporation (hereinafter referred to as "City" or "Covered Entity").

WHEREAS, the City has a Department of Health that provides a multitude of health care and related services; and

WHEREAS, in the course of providing health care and related services the City obtains protected health information; and

WHEREAS, Business Associate performs particular duties and/or provides particular services to the City; and

WHEREAS, the City wishes to disclose some information to Business Associate, some of which may contain protected health information; and

WHEREAS, the City and Business Associate intend to protect the privacy and provide for the security of protected health information in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the "HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

NOW, THEREFORE, in consideration of the mutual terms covenants, and conditions in this Agreement, the parties agree as follows:

1. **DEFINITIONS.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations, including the Privacy Rule and the Security Rule codified in Title 45, Sections 160-164 of the Code of Federal Regulations, and under the HITECH Act.

ATTACHMENT G
PAGE 1 OF 9 PAGES

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

- a. Non-disclosure. Business Associate agrees to not use or disclose protected health information other than as permitted or required by the Agreement or as required by law.
- b. Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the protected health information. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Regulations.
- c. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of protected health information by Business Associate in violation of the requirements of this Agreement.
- d. Notice of Use or Disclosure, Security Incident or Breach. Business Associate agrees to notify the designated privacy official of the Covered Entity of any use or disclosure of protected health information by Business Associate not permitted by this Agreement, any security incident involving electronic protected health information, and any breach of unsecured protected health information without unreasonable delay, but in no case more than thirty (30) days following discovery of breach.
 1. Business Associate shall provide the following information in such notice to Covered Entity:
 - (a) The identification of each individual whose unsecured protected health information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach;
 - (b) A description of the nature of the breach including the types of unsecured protected health information that were involved, the date of the breach and the date of discovery;
 - (c) A description of the type of unsecured protected health information acquired, accessed, used or disclosed in the breach (e.g., full name, social security number, date of birth, etc.);
 - (d) The identity of the person who made and who received (if known) the unauthorized acquisition, access, use or disclosure;
 - (e) A description of what the Business Associate is doing to mitigate the damages and protect against future breaches; and
 - (f) Any other details necessary for Covered Entity to assess risk of harm to individual(s), including identification of each individual whose unsecured

protected health information has been breached and steps such individuals should take to protect themselves.

2. Covered Entity shall be responsible for providing notification to individuals whose unsecured protected health information has been disclosed, as well as the Secretary and the media, as required by the HITECH Act.
3. Business Associate agrees to establish procedures to investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by Covered Entity.
4. The parties agree that this section satisfies any notice requirements of Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but unsuccessful security incidents for which no additional notice to Covered Entity shall be required. For purposes of this Agreement, unsuccessful security incidents include activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of electronic public health information.
- e. Reporting of disclosures. Business Associate agrees to report to Covered Entity any use or disclosure of the protected health information not provided for by this Agreement of which it becomes aware.
- f. Business Associate's Agents. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides protected health information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- g. Availability of Information to City. Business Associate agrees to provide prompt access to protected health information in a designated record set to Covered Entity or, as directed by Covered Entity, to an individual upon Covered Entity's request in order to meet the requirements under 45 CFR § 164.524. If Business Associate maintains an electronic health record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.
- h. Amendment of Protected Health Information. Business Associate

agrees to promptly make any amendment(s) to protected health information in a designated record set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an individual.

- i. Internal Practices. Business Associate agrees to make internal practices, books, and records, including policies and procedures and protected health information, relating to the use and disclosure of protected health information received from, or created or received by Business Associate on behalf of, covered entity available to the Secretary of the U.S. Department of Health and Human Services for purposes of the Secretary determining the Business Associate's compliance with the Privacy Rule.
- j. Reporting of Disclosures. Business Associate agrees to document such disclosures of protected health information and information related to such disclosures as would be required for the City to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with the Privacy Rule, including but not limited to 45 CFR § 164.528, and the HITECH Act.
- k. Availability of Information to Covered Entity. Business Associate agrees to promptly provide to Covered Entity or an individual information collected in accordance with Section 2(j) of this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with the Privacy Rule, including but not limited to 45 CFR § 164.528, and the HITECH Act.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

Except as otherwise limited in this Agreement, Business Associate may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule or the HITECH Act if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. The specific use and disclosure provisions are as follows:

- a. Except as otherwise limited in this Agreement, Business Associate may use protected health information for the proper management and administration of the Business Associate.
- b. Except as otherwise limited in this Agreement, Business Associate may disclose protected health information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the

business associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- c. Except as otherwise limited in this Agreement, Business Associate may use protected health information to provide data aggregation services to covered entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
 - d. Business Associate may use protected health information to report violations of law to appropriate federal and state authorities, consistent with § 164.502(j)(1).
4. PROHIBITED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.
- a. Business Associate shall not use or disclose protected health information for fundraising or marketing purposes.
 - b. Business Associate shall not disclose protected health information to a health plan for payment or health care operations purposes if the individual has requested this special restriction and has paid out of pocket in full for the health care item or service to which the protected health information solely relates.
 - c. Business Associate shall not directly or indirectly receive payment or remuneration in exchange for protected health information, except with the prior written consent of Covered Entity and as permitted by law, including HIPAA and the HITECH Act. This prohibition shall not effect payment by Covered Entity to Business Associate.
5. OBLIGATIONS OF COVERED ENTITY.
- a. Notification of Limitations in Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of covered entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.
 - b. Notification of Change or Revocation of Permission. Covered entity shall notify Business Associate of any changes in, or revocation of, permission by individual to use or disclose protected health information, to the extent that such changes may affect Business Associate's use or disclosure of protected health information.
 - c. Notification of Restrictions. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of protected health information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may effect Business Associate's use or disclosure of protected health information.
6. PERMISSIBLE REQUESTS BY COVERED ENTITY. Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that this restriction is not intended

and shall not be construed to limit Business Associate's capacity to use or disclose protected health information for the proper management and administration of the Business Associate or to provide data aggregation services to Covered Entity as provided for and expressly permitted under Section 3 (a), (b), and (c) of this Agreement.

7. TERM AND TERMINATION.

- a. *Term.* The term of this Agreement shall be effective upon execution, and shall terminate when all of the protected health information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy protected health information, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. *Termination for Cause.* Upon either party's knowledge of a material breach by the other party, the party with knowledge of the other party's breach shall either:
 1. Provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party;
 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 3. If neither termination nor cure is feasible, the violation shall be reported to the Secretary.
- c. *Effect of Termination.*
 1. Except as provided in paragraph (2) of this Section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all protected health information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to protected health information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the protected health information.
 2. In the event that Business Associate determines that returning or destroying the protected health information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible and shall extend the protections of this Agreement to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make the return or

destruction infeasible, for so long as Business Associate maintains such protected health information.

8. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS. Business Associate shall make itself and any subcontractors, employees, or agents assisting Business Associate in the performance of its obligations under this Agreement with the Covered Entity, available to Covered Entity, at no cost to Covered Entity to testify as witnesses or otherwise, in the event of litigation or administrative proceedings commenced against Covered Entity, its directors, officers, or employees based on a claimed violation of HIPAA, the HIPAA Regulations, the HITECH Act, or other laws relating to security or privacy, except where Business Associate or its subcontractors, employees or agents are named as an adverse party.
9. MISCELLANEOUS.
- a. *References.* A reference in this Agreement to a section in the HIPAA Regulations or the HITECH Act means the section as in effect or as amended.
 - b. *Amendment.* The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for covered entity to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, the HITECH Act and other privacy laws governing protected health information. Amendments must be in writing and signed by the parties to the Agreement.
 - c. *Survival.* The respective rights and obligations of Business Associate under Section 6(c) of this Agreement shall survive the termination of this Agreement.
 - d. *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Regulations and the HITECH Act.
10. LAW. This Agreement shall be governed by and construed pursuant to federal law and the laws of the State of California (except those provisions of California law pertaining to conflicts of laws). Business Associate shall comply with all laws, ordinances, rules and regulations of all federal, state and local governmental authorities.
11. ENTIRE AGREEMENT. This Agreement, including Exhibits, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.
12. INDEMNITY. Business Associate shall protect, defend, indemnify and hold City, its officials, employees, and agents (collectively in this Section referred to as "City") harmless from and against any and all claims, demands, causes of action, losses, damages, and liabilities, whether or not reduced to judgment, which may be asserted against City arising from or attributable to or caused directly or indirectly by Business Associate, Business Associate's employees, or agents in the performance of the duties under this Agreement or any alleged negligent or intentional act,

omission or misrepresentation by Business Associate, Business Associate's employees or agents, which act, omission or misrepresentation is connected in any way with performance of the duties under this Agreement. If it is necessary for purposes of resisting, adjusting, compromising, settling, or defending any claim, demand, cause of action, loss, damage, or liability, or of enforcing this provision, for City to incur or to pay any expense or cost, including attorney's fees or court costs, Business Associate agrees to and shall reimburse City within a reasonable time. Business Associate shall give City notice of any claim, demand, cause of action, loss, damage or liability within ten (10) calendar days.

13. AMBIGUITY. In the event of any conflict or ambiguity in this Agreement, such ambiguity shall be resolved in favor of a meaning that complies and is consistent with HIPAA, HIPAA Regulations, the HITECH Act and California law.
14. COSTS. If there is any legal proceeding between the parties to enforce or interpret this Agreement or to protect or establish any rights or remedies hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees and court costs, including appeals.
15. NOTICES. Any notice or approval required hereunder by either party shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid, addressed to Business Associate at the address first stated herein, and to the City at 333 West Ocean Boulevard, Long Beach, California 90802 Attention: Director, Health Department. Notice of change of address shall be given in the same manner as stated herein for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever first occurs.
16. WAIVER. The acceptance of any services or the payment of any money by City shall not operate as a waiver of any provision of this Agreement, or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.
17. CONTINUATION. Termination or expiration of this Agreement shall not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 12 and 14 prior to termination or expiration of this Agreement, and shall not extinguish any warranties hereunder.
18. ADVERTISING. Business Associate shall not use the name of City, its officials or employees in any advertising or solicitation for business, nor as a reference, without the prior approval of the City Manager or designee.
19. THIRD PARTY BENEFICIARY. This Agreement is intended by the parties to benefit themselves only and is not in any way intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all of the formalities required by law as of the date first stated herein.

Bowman Systems L.L.C.,
(Name of Business Associate)

a _____
(corporation, partnership, or individual and sole proprietorship)

_____, 20__

By J.P. [Signature]

Title: President

_____, 20__

By _____

Title: _____

CITY OF LONG BEACH, a municipal corporation

11.22, 2011

By [Signature] Assistant City Manager
City Manager or designee

"City" EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

The foregoing Agreement is hereby approved as to form this 10th day of November, 2011.

ROBERT E. SHANNON,
City Attorney or designee

By [Signature]
Deputy

ATTACHMENT 6
PAGE 9 OF 9 PAGES

Attachment "H"



CITY OF LONG BEACH

DEPARTMENT OF HEALTH AND HUMAN SERVICES

2525 GRAND AVENUE • LONG BEACH, CALIFORNIA 90815 • (562) 570-4000 • FAX: (562) 570-4049

CERTIFICATION REGARDING DEBARMENT

By signing and submitting this document, the recipient of federal assistance funds is providing the certification as set out below:

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the recipient of federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. The recipient of Federal assistance funds shall provide immediate written notice to the person to which this agreement is entered, if at any time the recipient of Federal Assistance funds learns that its certification was erroneous, when submitted or has become erroneous by reason of changed circumstance.
3. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
4. The recipient of Federal assistance funds agrees by submitting this document that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
5. The recipient of Federal assistance funds further agrees by submitting this document that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of parties excluded from procurement or non-procurement programs.
7. Nothing contained in the foregoing shall be constructed to require establishment of a system of records in order to render in good faith the certification required by this

ATTACHMENTH.....
PAGE1..... OF2..... PAGES

CERTIFICATION REGARDING DEBARMENT

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clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- 8. Except for transactions authorized under Paragraph 4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which the transaction originated may pursue available remedies, including suspension and/or debarment.

The regulations implementing Executive Order 12549, Debarment and Suspension, 24 CFR Part 24 Section 24.510, Participants' Responsibilities require this certification.

- 1. The recipient of Federal assistance funds certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2. Where the recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such participants shall attach an explanation to this document.

Agreement Number: _____ Contract Agency: Bowman Systems L.L.C.

Name and Title of Authorized Representative: _____

J.P. G 10/28/11
 Signature Date

Attachment "I"



CITY OF LONG BEACH

DEPARTMENT OF HEALTH AND HUMAN SERVICES

2525 GRAND AVENUE • LONG BEACH, CALIFORNIA 90815 • (562) 570-4000 • FAX: (562) 570-4049

CERTIFICATION REGARDING LOBBYING

Contractor(s) and lobbyist firm(s), as defined in the Los Angeles County Code Chapter 2.160 (ordinance 93-0031), retained by the Contractor, shall fully comply with the requirements as set forth in said County Code. The Contractor must also certify in writing that it is familiar with the Los Angeles County Code Chapter 2.160 and that all persons acting on behalf of the Contractor will comply with the County Code.

Failure on the part of the Contractor and/or Lobbyist to fully comply with the County's Lobbyist requirement shall constitute a material breach of the contract upon which the City of Long Beach may immediately terminate this contract and the Contractor shall be liable for civil action.

The Contractor is prohibited by the Department of Interior and Related Agencies Appropriations Act, known as the Byrd Amendments, and the Housing and Urban Development Code of Federal Regulations 24 part 87, from using federally appropriated funds for the purpose of influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, loan or cooperative agreement, and any extension, continuation, renewal, amendment or modification of said documents.

The Contractor must certify in writing that they are familiar with the Federal Lobbyist Requirements and that all persons and/or subcontractors acting on behalf of the Contractor will comply with the Lobbyist Requirements.

Failure on the part of the Contractor or persons/subcontractors acting on behalf of the Contractor to fully comply with Federal Lobbyist Requirements shall be subject to civil penalties. The undersigned certifies, to the best of his/her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, loan or cooperative agreement, and any extension, continuation, renewal, amendment or modification of said documents.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.

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CERTIFICATION REGARDING LOBBYING

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3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352 Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Agreement Number: _____ Contract Agency: Bowman Systems L.L.C.

Name and Title of Authorized Representative: _____

RLP. Z

Signature

10/28/11

Date

ATTACHMENT I
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