

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND,  
DFM ASSOCIATES, a California corporation**

THIS AGREEMENT, entered into this 10<sup>th</sup> day of November , 2009, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and DFM Associates, a California corporation hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing and supporting an "Election Information Management System" (EIMS<sup>TM</sup>), which is the computer software designed by DFM for use in the various processes used to register and manage voters, election officials and polling places as well as the election process itself.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO**

**AS FOLLOWS:**

**1. Exhibits and Attachments**

The following exhibits and attachments are included hereto and incorporated by reference herein:

- Exhibit A— Software Lease Agreement & Statement of Work
- Exhibit B— Payments and Rates
- Exhibit C – Project Task & Timeline

Attachment I— Contractors Declaration Form  
Attachment II— RFP Waiver Form  
Attachment III— Waiver for Jury Service Ordinance  
Attachment IV— Contract Insurance Approval Form  
Attachment V— § 504 Compliance  
Attachment VI— W9 Form

**2. Services to be performed by Contractor**

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

**3. Payments**

In consideration of this agreement and in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to reasonably withhold payment if the County is unable to perform its core business functions as a result of product failure or due to Contractors failure to perform as defined in this agreement.

In no event shall the County's total fiscal obligation under this Agreement exceed *One Million, Two Hundred Thousand Dollars and Zero Cents* [\$1,200,000.00].

**4. Term and Termination**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from November 10, 2009 through December 31, 2014.

This Agreement may be terminated by County or Contractor for "breach of contract" upon one hundred eighty (180) days' written notice to the other party, or as defined in Section 7.1 in "Exhibit A" regarding the expiration of this agreement.

**5. Availability of Funds**

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as it is reasonably possible after the County learns of said unavailability of outside funding.

**6. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

**7. Hold Harmless**

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and

description, brought for, or on account of: (A) Injuries to or death of any person, including Contractor, or (B) Damage to any property of any kind whatsoever and to whomsoever belonging, (C) Any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) Any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

**8. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

**9. Insurance**

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

(A) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

(B) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

(i)	Comprehensive General Liability .....	\$1,000,000
(ii)	Motor Vehicle Liability Insurance .....	\$1,000,000
(iii)	Professional Liability .....	\$1,000,000

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

**10. Compliance with laws; payment of Permits/Licenses**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. Further, Contractor certifies that the

Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

**11. Non-Discrimination and Other Requirements**

- (A) *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- (B) *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- (C) *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- (D) *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
  - i) Termination of this Agreement;
  - ii) Disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
  - iii) Liquidated damages of \$2,500 per violation;
  - iv) Imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

**12. Retention of Records, Right to Monitor and Audit**

- A. CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.
- B. Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.
- C. CONTRACTOR agrees to provide to COUNTY, to any Federal or State department having monitoring or review authority, to COUNTY's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

**13. Merger Clause**

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states

the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

**14. Controlling Law and Venue**

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

**15. Notices**

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United States mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt for transmittal, charges prepaid, addressed to:

**In the case of County, to:**

Chief Elections Officer,  
Assessor – County Clerk – Recorder  
555 County Center, 3<sup>rd</sup> Floor  
Redwood City, California 94063  
Attn: Warren Slocum

**In the case of Contractor, to:**

DFM Associates  
10 Chrysler – Suite A  
Irvine, California 92618  
Attn: Thomas G. Diebolt, President

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

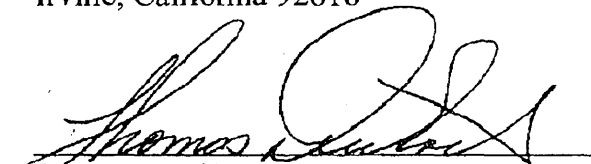
By: \_\_\_\_\_  
President, Board of Supervisors, San Mateo County

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board

DFM Associates  
10 Chrysler, Suite A  
Irvine, California 92618



Contractor's Signature  
Thomas G. Diebolt, President

Date: 10.16.09



## EXHIBIT A

### Contractor will:

- (1) Lease DFM Software to the County; to include but not limited to the software application called "Election Information Management System (EIMS)"
- (2) Lease or sublicense Third Party Software to the County; and
- (3) Provide Consulting Services to the County for data conversion, training and implementation support to include:
  - Project management
  - Requirements & gap analysis
  - Systems testing & acceptance

### **EIMS for Windows includes the following functional Modules:**

#### Precinct/District

Create and maintain precincts, districts and the relationship between those entities.

#### Street Guide

Create and maintain street segments and their relationship to precincts.

#### Office/Incumbent

Create and maintain office types, office definitions, and incumbent data.

#### Voter Registration & Maintenance

Create and maintain voter registration records. Allows for maintaining active, canceled and inactive voter records. Provides duplicate checking, customer tape generation, and other reporting features.

#### Affidavit Tracking

Maintains records of affidavits provided to third parties and tracks those subsequently returned.

#### Officers/Polling Places

Maintain records of polling places, election officers and election night workers. Maintain history.

#### Election Workspace

Manage Election definitions including contests, candidates and measures. Provides Ballot typing, consolidation, election officer and polling place management for the election. Produce election related mailings and reports. Manage Absentee/Mailed ballot voters.

### Petition Checking

Manage petition information, define new petitions, select random sample, provides system directed signature checking.

### Resources

Manage county specific information and options.

### ICR Data Entry Process

Intelligent Character Recognition (ICR) software to aid in data capture from the Affidavit of Registration and Roster Scanning.

## **Section 1**

1.1 Computer Hardware. Contractor will not supply computer hardware. County will supply the required hardware as defined by the following "hardware specifications" which will meet or exceed the necessary operating requirements for the DFM EIMS Application as it exist today. Should hardware requirements change in the future, County will be responsible for upgrading hardware to meet the minimum operating requirements for the DFM EIMS™ Application.

### Database Server

Processors: Quad Core 2.4 GHz (or better) Intel Xeon Processor or  
Quad Core 2.4 GHz (or better) AMD Opteron Processor

RAM: 8 GB RAM

Storage: 500 GB or greater (RAID 5 with 1 hot spare)

Other: Optional UPS, Backup Device and Backup Software.

Software: Microsoft Windows 2003 Server Enterprise Edition or higher  
Microsoft SQL Server 2005 or higher  
Microsoft SQL Server CAL (1 per workstation)

### Application Servers – Two Application Servers are Recommended for San Mateo

Processors: Quad Core 2.4 GHz (or better) Intel Xeon Processor or  
Quad Core 2.4 GHz (or better) AMD Opteron Processor

RAM: 8 GB RAM

Storage: 250 GB or greater (RAID 1 minimum)

Other: Optional UPS

Software: Microsoft Windows 2003 Server Enterprise Edition or higher  
Microsoft Windows Server CAL (1 per workstation)

Windows Terminal Server CAL (1 per workstation)  
Microsoft Office 2003 Professional or higher  
Semaphore Corp ZP4 (Address Standardization Software)  
**Additionally recommended, but not required, software:**  
Business Objects Crystal Reports V11.0 Professional Edition  
Adobe Acrobat Professional V. 8

1.2 Site Preparation, Etc. County will be responsible for site preparation. All site preparation shall be completed on or before the scheduled start date of the application implementation.

1.3 Installation of Computer Hardware. County will be responsible for the installation of Computer Hardware and the installation of any software not provided under this agreement and the integration and connection of the Computer Hardware with any other computer equipment and/or software owned, leased, licensed, sublicensed, used or operated by the County.

## Section 2

2.1 Installation of the Specified DFM Software. On or before December 31, 2009 or as soon thereafter as is reasonably practicable, Contractor shall install the DFM Software. The installation shall be deemed to have been completed when the County determines it is able to log into the EIMS and perform Voter Registration maintenance and look-up functions on its core databases.

2.2 Right to Use the Specified DFM Software. Contractor grants to the County the nonexclusive right to lease and use the Specified DFM Software on the terms and subject to the conditions set forth in this Agreement. The County's right to use and lease any Specified DFM Software specifically excludes the right to sublicense, assign, sublease or otherwise transfer the Specified DFM Software and/or any of the County's rights hereunder or therein.

2.3 DFM Software Releases. Contractor will provide the County with all Software Releases for the Specified DFM Software within one hundred twenty (120) days after the new Software Release becomes generally available to other DFM customers. The cost of the Software Releases is included in the Monthly Fee. Installation of the DFM Software Releases will be coordinated by Contractor and a designated representative of the County.

2.4 Authorized Maintenance. All Software Maintenance, Software Enhancements and Software Releases shall be provided and installed by employees or authorized agents of Contractor.

2.5 Post Installation Services. Contractor agrees to provide the County with post-installation services as follows:

- (a) Contractor agrees to provide maintenance of the Specified DFM Software to correct program errors and to use good faith reasonable efforts to correct compatibility problems among such Computer Hardware, Specified DFM Third Party Software and the Specified DFM Software, the cost of which is included in the Monthly Fee for such Specified DFM Software; and
- (b) Contractor agrees to provide Software Releases covering applicable legislative changes and enactment of new laws applicable to such Specified DFM Software, the cost of which is included in the Monthly Fee.

2.6 Training. Contractor agrees to provide the following training services with respect to any Specified DFM Software:

- (a) Contractor will establish, with the help of a designated representative of the County, which users will participate in training and on which subsystems.
- (b) Contractor will develop a training schedule with sufficient training to allow the department or agency of the County which will have primary responsibility for using the Specified DFM Software to operate it.
- (c) Contractor will conduct the actual training sessions, including "hands on" and formal classroom training, with the initial training to be on-site at the County's facilities.

User training costs for any Specified DFM Software are included in the Initial Installation Fee and the Monthly Fee. There are no additional costs for training. As subsystems of any Specified DFM Software are enhanced or changed to conform to new requirement, users will be provided training with respect thereto on an on-going basis. Training with respect to enhanced or changed subsystems can be on-site or regional, depending on the material and individual needs of the users.

2.7 Limitation on Contractors Obligations. Notwithstanding any other provision of this Agreement to the contrary, Contractor has no duty or obligation to perform any Software Maintenance or to provide the County with any Software Enhancements or Releases, or to provide any training to the County with respect to any Specified DFM Software if the County fails or refuses to utilize the most current revision of the Specified Operating System Software required by Contractor; provided, however, in any event, Contractor shall give the County at least one-hundred twenty (120) days prior written notice of the need to upgrade or replace the version of the Specified Operating System Software which the County is then using, and Contractor shall consult with the County's user group regarding the scheduling of such changes.

### **Section 3**

3.1 Access to Facilities. The County shall provide Contractor and its employees and authorized agents access to the County's facilities, including the Computer Hardware, and shall provide them with adequate facilities (including a desk, work area and computer), to enable Contractor to perform its obligations under this Agreement in an effective, efficient and professional manner. Access shall be provided during the County's usual business hours upon reasonable prior notice except in the case of an emergency when access shall be provided as soon as is reasonably practicable.

3.2 Specified Operating System Software. The County shall be solely responsible for, and shall pay all costs and expenses associated with, the purchase or license of, and the installation and maintenance of, the appropriate version of the Specified Operating System Software required by Contractor at any time or from time to time. The County acknowledges and understands that upgrading of Computer Hardware and of the Specified Operating System Software and any other applications software used in conjunction with the DFM Software will be required from time to time; provided, however, in any event, Contractor shall give the County at least one-hundred twenty (120) days prior written notice of the need to upgrade or replace the version of the Specified Operating System Software which the County is then using, and Contractor shall consult with the County's user group regarding the scheduling of such changes.

3.3 Responsibility for the County's Data. At all times during the term of this Agreement, the County shall retain all ownership rights in the County's Data (as that term is defined below). In addition, notwithstanding any use by the County of any DFM Software in connection therewith, the County shall be solely responsible and accountable for the accuracy and completeness of, all data and information stored by it in any database in any format (hereafter referred to as the "County's Data"), and for any use, publication or other dissemination of the County's Data. If the County uses, publishes or otherwise disseminates, or otherwise allows any access to, any portion of the County's Data, whether before or after it has been manipulated by the DFM Software, and whether or not it is a commercial or non-commercial use, by doing so the County is representing to Contractor that it has accepted, ratified and approved the accuracy and completeness of the County's Data and accepts full responsibility for it. The County hereby agrees to indemnify, defend, protect and hold Contractor harmless from and against any claims, liabilities, judgments, costs and expenses, including reasonable attorneys' fees and costs, which Contractor may incur or suffer arising out of the accuracy or inaccuracy of (which includes omissions to) the County's Data, including, without limitation, claims of any third party who accesses the County's Data using the DFM Software.

## Section 4

4.1 Protection of Confidentiality of DFM Software. Contractor has taken reasonable security measures to protect the secrecy and confidentiality of the DFM Software. All employees of Contractor and other persons who have designed, developed or programmed all or any portion of the DFM Software, or any software included therein, or who otherwise have knowledge of or access thereto, have been adequately notified that the DFM Software is proprietary to Contractor and is not to be divulged, used or exploited except as expressly authorized by Contractor in writing.

4.2 Confidentiality Covenants of the County. The County acknowledges and agrees that the DFM Software, and all constituent parts thereof, is valuable only as long as it remains secret and confidential. Accordingly, the County agrees to take all steps reasonably necessary to protect and maintain the confidentiality of all DFM Software and to prevent it from entering the public domain or falling into the hands of others not bound by this Agreement. In furtherance hereof, the County agrees as follows:

(a) The County shall use its good faith reasonable efforts to restrict access to any Computer Hardware running or capable of accessing the DFM Software, and to the DFM Software itself, to prevent unauthorized personnel from acquiring significant or confidential information concerning the DFM Software.

(b) To the extent reasonably practicable, the County shall require all persons who will have access to any DFM Software, to sign on an annual basis a confidentiality agreement, in a form provided by Contractor which is acceptable to the County.

(c) The County shall not duplicate or reproduce (except to the extent reasonably required to back-up the Specified DFM Software in the ordinary course of business), in any manner, any DFM Software, or any component or constituent parts thereof, and agrees not to disseminate, display or use any DFM Software, or any component or constituent parts thereof, of any information or material concerning any DFM Software, except as is reasonably necessary for the County to perform its functions using any Specified DFM Software and to comply with the terms of this Agreement.

(d) The County shall notify Contractor immediately of any and all unauthorized disclosures, or any suspected unauthorized disclosures of any DFM Software.

4.3 Binding Effect. Notwithstanding the fact that certain employees, agents, contractors, subcontractors or licensees of the County are not parties to this Agreement, the terms and provisions of this agreement shall be binding upon the County and all of its officers, employees, agents, contractors, subcontractors and licensees.

4.4 Discovery of Specified DFM Software by Legal Process. If at any time, a party to any litigation involving the processes, function or departments of the County which uses any Specified DFM Software, seeks by way of litigation or legal process to discover information in any way related to any Specified DFM Software, or requires the production of any Specified DFM Software, or any component or constituent part thereof, the County shall promptly notify Contractor of such matter as soon as the complaint, subpoena or discovery request has been served on the County or its lawyers, but in no event later than ten (10) days after service thereof. Prior to the time specified in the legal document, court order, subpoena or moving papers for the disclosure of information relating to, or the delivery of all or any portion of any Specified DFM Software, the County shall cooperate with Contractor so as to maintain, to the maximum extent reasonably practicable and permitted by law, the confidentiality and secrecy of all Specified DFM Software and to request, if requested by Contractor, a protective order of the court or legal forum to avoid further disclosure or divulgence of any matters relating to any Specified DFM Software and to assure the continued protection of the confidentiality thereof. However, such action is to occur only in the event that Contractor is unable to make timely intervention into said legal action or proceeding. Contractor shall reimburse the County for all reasonable legal fees and expenses which it incurs resulting from actions it has taken pursuant to this Section.

## **Section 5**

5.1 Limited Warranty Specified DFM Software. Contractor warrants, for the sole benefit of the County and no other person or entity, that the Specified DFM Software shall be capable of performing the core functions set forth in this agreement related thereto, subject to the limitations set forth in Section 5.2 below. This is Contractor's sole express warranty with respect to any Specified DFM Software. Any claim by the County against Contractor for breach of its express warranty must be in writing and must be promptly delivered by the County to Contractor. In the event of any breach of Contractor's express warranty, the County's sole and exclusive remedy against Contractor, and Contractor's sole and exclusive liability to the County, shall be that Contractor, at its sole cost and expense, shall exercise good faith (for all purposes of this Agreement, the term "good faith" shall have the same meaning as that term is defined and used in California Commercial Code Section 2103(1)(b)) reasonable efforts to provide adequate programming services to correct such inherent defect, as Contractor and the County deem necessary or appropriate. Warranty service performed in accordance with this Section shall be performed during normal weekday business hours, excluding Contractor holidays. With respect to any reported errors that result or will result in significant interruption of the County's productivity or down time ("Business

Impacting Failures”), Contractor shall use its best efforts to begin error correction procedures within twenty-four (24) hours after receipt of such report. With respect to any reported errors that do not constitute Business Impacting Failures, Contractor shall use its good faith reasonable efforts to begin error correction procedures no later than seventy-two (72) hours after receipt of such report. Contractors’ sole and exclusive obligation under the foregoing warranty shall be to exercise its good faith reasonable efforts to implement appropriate error corrections in response to notices from the County of such errors.

5.2 Warranty Limitations Specified DFM Software. Notwithstanding the warranty provisions set forth in Section 5.1 above, all of Contractors’ obligations with respect to such warranties shall be contingent upon the County’ use of the Specified DFM Software in accordance with this Agreement and in accordance with instructions provided by Contractor from time to time, including those set forth in the Manuals, as the same may be amended, supplemented or modified from time to time. Contractor shall have no warranty obligation:

(a) With respect to any portion of the Specified DFM Software which has been:

- (i) Operated by the County or its employees, agents, contractors, subcontractors or licensees in a manner inconsistent with the requirements set forth in the Manuals or elsewhere, or that has been modified by any party other than Contractor;
- (ii) Damaged in any manner by any cause other than any act or omission of Contractor;
- (iii) Operated or maintained in environmental conditions outside the parameters designated by Contractor in the Manuals or elsewhere;
- (iv) Subjected to extreme power surges or electromagnetic field(s);
- (v) Reinstalled without the prior written consent of Contractor; or



(vi) Determined by Contractor to have an error or defect, which fact is conveyed to the County together with supplemental instructions on how to avoid or circumvent the error or defect, and the County fails or refuses to follow the supplemental instructions.

(b) As a result of or in any way connected with any error or defect in the Specified Operating System Software and/or any application software provided by any Third Party Software Vendor; provided, however, in such event, Contractor will use its good faith reasonable efforts to resolve the problem to the extent that a resolution is reasonably available by reprogramming the DFM Software;

(c) As a result of or in any way connected with the County's failure or refusal to use the Specified Operating System Software or to upgrade its Computer Hardware as requested by Contractor; or

(d) As a result of or in any connected with any of the County's Data.

5.3 Disclaimer of Warranties Specified DFM Software. Contractor does not represent or warrant that the Specified DFM Software will be free from errors or that all errors in any specified DFM Software will be corrected. The Warranty stated in Section 5.1 is the sole and exclusive Warranty offered by DFM. There are no other warranties respecting the specified DFM Software, either express or implied, including but not limited to any warranty of design, merchantability or fitness for a particular purpose, even if DFM has been informed or is otherwise made aware of such purpose. No agent of DFM is authorized to alter or exceed the Warranty obligations of DFM set forth in Section 5.

5.4 Limitation on Liability and Remedy Specified DFM Software. The County acknowledges the complexity and interrelationships of each of the component and constituent parts comprising any Specified DFM Software. The County further acknowledges and agrees that the Monthly Fee which contractor is charging for any specified DFM Software does not include any consideration for assumption by contractor of the risk of the county's incidental or consequential damages which may arise in connection with the County's use of any specified DFM Software. Accordingly, the County agrees that contractor shall not be responsible to the County, or any department, agency or subdivision thereof, for any incidental or consequential damages arising out of the licensing, leasing or use of any specified DFM Software; provided however that contractor shall be responsible for such incidental (but not consequential) costs and expenses arising in connection with any infringement or alleged infringement of third party proprietary rights as set forth in section 6 below.

## **Section 6**

6.1 Indemnification by DFM. Contractor, at its own expense, shall indemnify, defend, protect and hold the County harmless against any claim which may be brought against the County or its officers, agents or employees, to the extent that it is based on a claim that the County's use of the Specified DFM Software pursuant to this Agreement, or

any of its components or constituent parts leased or licensed hereunder, infringes any patent, copyright, license or trade secret of any third party, and in such event, Contractor shall pay all of those costs and damages, including expenses and reasonable attorneys' fees, finally awarded against the County or any of its officers, agents or employees attributable to such claim. Control of the defense, including all negotiations and discussions regarding compromise and settlement, shall be vested in Contractor, but shall be with the advice and consent of the County. The obligations of Contractor set forth in this Section are conditional upon compliance by the County with all of the provisions set forth in Sections 6.2 through 6.3 below.

6.2 Notice of Claims. The County covenants and agrees to provide Contractor with written notice of any actual, threatened or potential infringement claim within thirty (30) days of notice thereof by or to the County.

6.3 Remedial Action. If, in the opinion of Contractor, the Specified DFM Software or any of its components leased to the County is likely to or has become the subject of a claim of infringement of patents, copyrights, licenses or trade secrets of any third party, then, without diminishing Contractor's obligations to satisfy the final award, Contractor may, at its option and expense, either:

- (a) Obtain the right for the County to continue to use the Specified DFM Software and its components leased hereunder, or
- (b) Substitute for the allegedly infringing components other equally suitable components mutually satisfactory to the County and Contractor.

## **Section 7**

7.1 The initial Lease Term for any Specified DFM Software or any Specified Consulting Service shall be set forth on the San Mateo Master Agreement, Section 4. After the expiration of the initial term, this Agreement shall automatically continue with respect to such Specified DFM Software or such Specified Consulting Service on a year to year basis, unless either party gives the other written notice, at least ninety (90) days prior to the expiration of the term, of its decision not to renew the term hereof with respect to such Specified DFM Software or such Specified Consulting Service, in which case the term as it relates to such Specified Consulting Service and/or such Specified DFM Software shall terminate on June 30th at the expiration of its term.

## **Section 8**

8.1 Debilitating Event. Any of the following events, which occur with respect to Contractor, shall be deemed to be a "Debilitating Event" and shall cause this Agreement to be modified immediately upon notice to the County of such Debilitating Event and shall cause the Agreement to terminate automatically two hundred forty (240) days thereafter:

(a) Any assignment by Contractor for the benefit of its creditors; or the entry of a court order appointing a receiver or trustee for all or substantially all of Contractor's assets or properties, which order shall not be vacated, set aside or stayed within sixty (60) days from the day of entry of said court order; or the filing by Contractor of a petition in bankruptcy or the commencement of any similar proceeding under any law for the relief of debtors by or against Contractor; or

(b) Any permanent cessation by Contractor of its business, which is not succeeded to by a successor in interest; or

(c) Any voluntary termination or dissolution of Contractor pursuant to which the rights of Contractor under this Agreement have not been transferred to a successor in interest.

8.2 Transition Period. For purposes of this Agreement, the term "Transition Period" shall mean the sixty (60) day period immediately following the occurrence of a County Breach other than a County Breach related to the payment of money to Contractor, or two hundred forty (240) days following the occurrence of a Debilitating Event, whichever is applicable. This Agreement shall continue, and all obligations of the parties hereunder shall remain, in full force and effect during the Transition Period subject only to legal impairments on the ability of Contractor to perform if the Transition Period arises as a result of a Debilitating Event. Provided, however, in no event shall the Transition Period extend beyond the expiration of the term of this Agreement. The obligations of the County set forth in this Agreement shall continue, to the extent applicable, notwithstanding the termination of this Agreement.

8.3 Obligations of the County At Expiration of Transition Period.

(a) Immediately upon the termination of this Agreement, the County shall return to Contractor any and all tangible manifestations of any DFM Software previously delivered by Contractor to the County, and any copies, duplicates or reproductions thereof, whether authorized or not.

(b) In the event of the occurrence of a Debilitating Event, the County shall be permitted to continue to use any Specified DFM Software during the Transition Period; provided, however, Contractor will not provide any Software Maintenance, Software Enhancements or Software Releases during such period of time; and, provided, further, the obligation of the County to pay the Monthly Fee shall be reduced to an amount equal to eighty percent (80%) of the applicable Monthly Fee which would otherwise be applicable during such period.

8.4 Option to Purchase the Specified DFM Software. In the event of the termination of this Agreement as related to any Specified DFM Software, where such termination is as the result of a Debilitating Event, but only in such event, the County shall have the right and option to purchase the copy of the Specified DFM Software (including a copy of the

source code) which it has installed on its Computer Hardware ("Software Purchase Option") on the terms and subject to the conditions set forth in this Section:

(a) In order to exercise its option pursuant to this Section, the County must deliver to Contractor written notice ("Option Notice") of its intent to exercise the Software Purchase Option, specifying the Specified DFM Software which it desires to purchase, and it must deliver the Option Notice to Contractor prior to the expiration of the Transition Period.

(b) The Purchase Price (as that term is defined below) is payable in cash in full not later than thirty (30) days after receipt by Contractor of the Option Notice.

(c) The Purchase Price shall be equal to sixty (60) times the then applicable Monthly Fee for the Specified DFM Software which is the subject of the Software Purchase Option if the termination is during the first year after the commencement of the initial term of this Agreement as it is related to such Specified DFM Software, forty-eight (48) times the then applicable Monthly Fee if the termination is during the second year of the initial term, and thirty-six (36) times the then applicable Monthly Fee if the termination is at any other time.

(d) The Software Purchase Option is personal to the County and may not be sold or assigned. Strict compliance by the County with all of the provisions of this Section is required. Failure to strictly comply with the time frames shall cause the Software Purchase Option to terminate.

## EXHIBIT B

### DFM Pricing & Payment Terms

#### EIMS Software Lease

Installation, Conversion and Training: \$35,000.00.

One Time Lead Tools Image License: \$600.

Initial Monthly Fee: \$11,400.00.

Initial Lease Term: Sixty (60) months beginning February 1, 2010 and continuing thereafter until December 31, 2014 (subject to extension as provided in Section 7 of the Exhibit A).

#### ICR Data Entry Process – (An EIMS Subsystem)

Installation, Conversion and Training: \$50,000.00.

Monthly Lease Fee: For the right to use the ICR Data Entry Process subsystem, the County agrees to pay to DFM \$1,600 per month.

Initial Lease Term: Sixty (60) months beginning February 1, 2010 and continuing thereafter until December 31, 2014 (subject to extension as provided in Section 7 of the Exhibit A).

#### FEES & TAXES

- a) Initial Installation Fee. County agrees to pay the initial installation fee to Contractor upon installation of the Specified DFM Software and after the Contractor has demonstrated to the County it can:
  - 1) Log into the application,
  - 2) Access its core database; and
  - 3) Generally be able to perform the functions as described in "Exhibit A".
  
- b) Monthly Fee. As consideration for the non-exclusive right to use the Specified DFM Software, the County agrees to pay Contractor the Monthly Fee within thirty (30) days after receipt of a correct invoice. The monthly fee for the first full month of any Lease Term shall be paid at the time any DFM Software install has been completed. If any rental payment date falls on a day of the month other than the first day of such month, or if any rental payment is for a period which is shorter than one month, the rental for any fractional month shall accrue on a daily basis for the period from the date such payment is due to the end of such calendar month or to the end of the Lease Term at a rate per day which is equal to one-thirtieth (1/30) of the then current monthly fee.

- c) Sales and Use Taxes. The County shall be responsible for paying, and shall pay, all applicable sales and use taxes. If the County advises Contractor that no sales or use taxes are due or collectible, then the County shall indemnify, defend, protect and hold Contractor harmless from and with respect to any claim related to the collection, payment or reporting of such sales or use taxes, including all penalties and interest thereon or as a result of the non-payment thereof or the failure to file any return required to be filed, and any attorneys' fees incurred by Contractor in enforcing its indemnity rights hereunder or in defending any claim to collect or pay such sales or use taxes.

**TOTAL CHARGES DUE**

<b>Annual Cost - 5 Year Rate – Taxes Included</b>	
Year 1 (With Integration)	\$262,923.16
Year 2	\$169,405.16
Year 3	\$169,405.16
Year 4	\$169,405.16
Year 5	\$169,405.16
<b>Total</b>	<b>\$940,543.80</b>

Tax calculations are based on the current state and federal taxes as of the date of execution of this agreement. County and Contractor agree that taxes may increase over the life of this agreement and thus may affect the annual payments set forth above.

In no event shall the County's total fiscal obligation under this Agreement exceed *One Million, Two Hundred Thousand Dollars and Zero Cents* [\$1,200,000.00].

EXHIBIT C

San Mateo County EMS Installation Plan

ID	Task Name	Duration	Start	Finish	Predecessors
1	Contract Signed	0 days	Tue 12/1/09	Tue 12/1/09	
2	Data Conversion	9.5 days	Tue 12/1/09	Mon 12/14/09	1
3	Data Files to DFM	0 days	Tue 12/1/09	Tue 12/1/09	2
4	Street File	1 day	Tue 12/1/09	Tue 12/1/09	2
5	Precinct File	0.5 days	Wed 12/2/09	Wed 12/2/09	2
6	District File	0.5 days	Wed 12/2/09	Wed 12/2/09	2
7	Voter File	3 days	Thu 12/3/09	Mon 12/7/09	2
8	Voter History File	0.5 days	Tue 12/8/09	Tue 12/8/09	2
9	Polling Place File	2 days	Tue 12/8/09	Thu 12/10/09	2
10	Exec Officer File	1 day	Tue 12/1/09	Tue 12/1/09	
11	Image File Conversion	1 day	Mon 12/14/09	Mon 12/14/09	2
12	Software Installation	1 day	Tue 12/15/09	Wed 12/16/09	2
13	Data Integration Testing	0.5 days	Wed 12/16/09	Wed 12/16/09	2
14	Software Acceptance	0 days	Wed 12/16/09	Wed 12/16/09	2
15	Data Conversion Acceptance	1 day	Thu 12/17/09	Thu 12/17/09	2
16	Training	13.75 days	Fri 12/18/09	Wed 1/6/10	2
17	Phase I	8.25 days	Fri 12/18/09	Wed 1/6/10	2
18	Pct Dist Part 1	0.5 days	Fri 12/18/09	Fri 12/18/09	17
19	Street Guide Part 1	0.5 days	Fri 12/18/09	Fri 12/18/09	17
20	Pct Dist Part 2	0.5 days	Mon 12/21/09	Mon 12/21/09	17
21	Pct Dist Part 2	0.5 days	Mon 12/21/09	Mon 12/21/09	17
22	Application Overview	1 day	Tue 12/22/09	Tue 12/22/09	17
23	Voter Module I	0.75 days	Wed 12/23/09	Wed 12/23/09	17
24	Scanning I	0.25 days	Wed 12/23/09	Wed 12/23/09	17
25	Office Incumbent I	1 day	Thu 12/24/09	Thu 12/24/09	17
26	Voter Module II	0.75 days	Fri 12/25/09	Fri 12/25/09	17
27	Scanning II	0.25 days	Fri 12/25/09	Fri 12/25/09	17
28	Office Incumbent II	0.75 days	Mon 12/28/09	Mon 12/28/09	17
29	Scanning III	0.25 days	Mon 12/28/09	Mon 12/28/09	17
30	Office Incumbent III	0.75 days	Tue 12/29/09	Tue 12/29/09	17
31	Polling Place/Elec Off Master	1 day	Wed 12/30/09	Wed 12/30/09	17
32	Petition Checking	0.5 days	Wed 12/30/09	Wed 12/30/09	17
33	Phase II	5.5 days	Wed 12/30/09	Wed 1/6/10	17
34	Election Workspace I	2 days	Wed 12/30/09	Fri 1/1/10	17
35	Candidate Filing	0.5 days	Fri 1/1/10	Fri 1/1/10	17
36	Absent Voters	1 day	Mon 1/4/10	Mon 1/4/10	17
37	Polls & Officers	1 day	Mon 1/4/10	Tue 1/5/10	17
38	Election Wkspc II	1 day	Tue 1/5/10	Wed 1/6/10	17

Project: EMS Installation Plan.mpp  
 Start Date: Tue 12/1/09  
 Finish Date: Wed 1/6/10

Task Split

Progress Milestone

Summary Project Summary External Tasks External MileTask Split

San Mateo County EMS Installation Plan

ID	Task Name	Duration	Start	Finish	Predecessors	V. 29 '09	Dec 6 '09	Dec 13 '09	Dec 20 '09	Dec 27 '09	Jan 3 '10
39	Training Acceptance	0 days	Wed 1/6/10	Wed 1/6/10 18:12:11	2	M T W T F S S	S	S	S	S	S
40	Final System Acceptance	0 days	Wed 1/6/10	Wed 1/6/10 39		M T W T F S S	S	S	S	S	S

Project: EIMS Installation Plan.mpp  
 Start Date: Tue 12/7/09  
 Finish Date: Wed 1/6/10

Task: Split

Progress Milestone

Summary Project Summary

External Tasks External MileTask

Split



**County of San Mateo  
Contractor's Declaration Form**

**I. CONTRACTOR INFORMATION**

Contractor Name:	DFM Associates, Inc.	Phone:	949-859-8700
Contact Person:	Thomas G. Diebolt	Fax:	949.859.9512
Address:	10 Chrysler, Suite A Irvine, California - 92618		

**II. EQUAL BENEFITS** (check one or more boxes)

*Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.*

- X Contractor complies with the County's Equal Benefits Ordinance by:
  - offering equal benefits to employees with spouses and employees with domestic partners.
  - offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- Contractor does not comply with the County's Equal Benefits Ordinance.
- Contractor is exempt from this requirement because:
  - Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
  - Contractor is a party to a collective bargaining agreement that began on \_\_\_\_\_ (date) and expires on \_\_\_\_\_ (date), and intends to offer equal benefits when said agreement expires.

**III. NON-DISCRIMINATION** (check appropriate box)

- Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- X No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

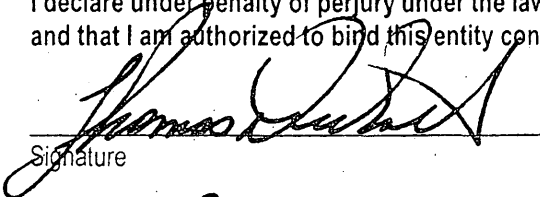
**IV. EMPLOYEE JURY SERVICE** (check one or more boxes)

*Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.*

- Contractor complies with the County's Employee Jury Service Ordinance.
- Contractor does not comply with the County's Employee Jury Service Ordinance.
- X Contractor is exempt from this requirement because:
  - the contract is for \$100,000 or less.
  - Contractor is a party to a collective bargaining agreement that began on \_\_\_\_\_ (date) and expires on \_\_\_\_\_ (date), and intends to comply when the collective bargaining agreement expires.

X **This is a software lease agreement and the contractor does not employ any San Mateo County residents.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

  
Signature

\_\_\_\_\_  
Name

10-19-09  
Date

\_\_\_\_\_  
Title

## Waiver Request Memo

Date: 10/19/2009  
To: County Manager's Office  
From: Assessor – County Clerk - Recorder  
Subject: Waiver Request

The following waiver and/or modification is being requested:

Equal Benefits Ordinance \_\_\_\_\_  
Non-Discrimination Enforcement Language \_\_\_\_\_  
Extending the contract beyond three years X  
Contractor Employee Jury Service Ordinance X

to enter into or amend a contract with DFM Associates, Inc. for a Voter Registration System in the amount of \$1,200,000.00.

This waiver and/or modification is necessary and in the best interest of the County for the following reason(s):

- Necessary in order to respond to an emergency
- Sole Source
- No compliant contractors are capable of providing the goods/service
- Inconsistent with a grant, subvention or agreement with a public agency
- Is part of a Cooperative or Joint Purchasing Agreement
- Other

Included is a detailed explanation of the reason(s) checked above.

Section 12 of the San Mateo County standard contract template was deleted. The revised template/agreement has been reviewed and approved by county counsel. The agreement with DFM Associates, Inc. is a Software Lease Agreement and there will be no San Mateo County residents employed as a result of this contract.

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- Approved  
 Not Approved

  
\_\_\_\_\_  
Signing Authority

10/19/09  
\_\_\_\_\_  
Date

**CONTRACT INSURANCE APPROVAL**

**DATE:** October 20, 2009  
**TO:** Faiza Steele      FAX: 363-4864      PONY: HRD 163  
**FROM:** Warren Slocum  
Chief Elections Officer & Assessor-County Clerk-Recorder  
**PHONE:** 650.363.4988      **FAX:** 650-363-1903      **PONY:** ARC140

The following is to be completed by the department before submission to Risk Management:

CONTRACTOR NAME: DFM Associates, Inc.

DOES THE CONTRACTOR TRAVEL AS A PART OF THE CONTRACT SERVICES? Yes


NUMBER OF EMPLOYEES WORKING FOR CONTRACTOR: 2 to 3 onsite for 3 weeks

DUTIES TO BE PERFORMED BY CONTRACTOR FOR COUNTY: Data Conversion, Systems Integration, Testing, Training

The following will be completed by Risk Management:

INSURANCE COVERAGE:	Amount	Approve	Waive
Modify			
Comprehensive General Liability	\$ 1mil <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Motor Vehicle Liability	\$ 1mil <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Professional Liability	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Workers' Compensation	statutory <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

REMARKS/COMMENTS:

  
\_\_\_\_\_  
Faiza Steele  
Risk Management Analyst

10/20/09  
\_\_\_\_\_  
Date



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/19/2009PRODUCER (619) 668-4600 FAX: (619) 469-1569  
Alvarado Pacific Insurance Services, Inc.  
7777 Alvarado Rd. #605

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

La Mesa CA 91941-3649

INSURERS AFFORDING COVERAGE

NAIC #

INSURED  
DFM Associates, Inc.  
10 Chrysler

INSURER A: Federal Insurance Company

20281

INSURER B: Employers Compensation Ins Co

INSURER C:

INSURER D:

Irvine CA 92618

INSURER E:

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	3535-92-08 WUC / PKG	7/1/2009	7/1/2010	EACH OCCURRENCE \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	(09) 7351-34-66 / AUTO	7/1/2009	7/1/2010	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
					BODILY INJURY (Per person) \$
	GARAGE LIABILITY ANY AUTO				BODILY INJURY (Per accident) \$
	EXCESS / UMBRELLA LIABILITY OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				PROPERTY DAMAGE (Per accident) \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below OTHER	SE81-0109-22736	1/1/2009	1/1/2010	AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC AGG \$ EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
					<input checked="" type="checkbox"/> WC STATU-TORY LIMITS   OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

### DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate holder, its officers, agents, employees and servants are named as Additional Insured on the general liability policy per form 80-02-2305 (4-01) as respects operations of the named insured under written contract. \*10 days notice of cancellation to be given in the event of non payment of premium.

### CERTIFICATE HOLDER

San Mateo County  
Chief Elections Officers  
Assessor - County Clerk - Recorder  
40 Tower Rd  
San Mateo, CA 94402

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Gayle Bailey/JLA

ACORD 25 (2009/01)  
INS025 (200901)

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## Liability Insurance

### Endorsement

*Policy Period* JULY 1, 2009 TO JULY 1, 2010  
*Effective Date*  
*Policy Number* 3535-92-08 WUC  
*Insured* DFM ASSOCIATES, INC.  
*Name of Company* FEDERAL INSURANCE COMPANY  
*Date Issued*

This Endorsement applies to the following forms:

GENERAL LIABILITY

Under Who Is An Insured, the following provision is added:

#### Who Is An Insured

##### *Scheduled Person Or Organization*

Subject to all of the terms and conditions of this insurance, any person or organization shown in the Schedule, acting pursuant to a written contract or agreement between you and such person or organization, is an **insured**; but they are **insureds** only with respect to liability arising out of your operations, or your premises, if you are obligated, pursuant to such contract or agreement, to provide them with such insurance as is afforded by this policy.

However, no such person or organization is an **insured** with respect to any:

- assumption of liability by them in a contract or agreement. This limitation does not apply to the liability for damages for injury or damage, to which this insurance applies, that the person or organization would have in the absence of such contract or agreement.
- damages arising out of their sole negligence.

#### Schedule



**Request for Taxpayer  
 Identification Number and Certification**

Give form to the requester. Do not send to the IRS.

Print or type  
See Specific Instructions on page 2.

Name <b>DFM Associates</b>	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶	
<input checked="" type="checkbox"/> Exempt from backup withholding	
Address (number, street, and apt. or suite no.) <b>10 Chrysler, Suite A</b>	Requester's name and address (optional)
City, state, and ZIP code <b>Irvine, California 9261895-3647032</b>	
List account number(s) here (optional)	

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see **How to get a TIN** on page 3.

Social security number								

or

Employer identification number								
9	5	3	6	4	7	0	3	2

**Note:** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

**Part II Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

<b>Sign Here</b>	Signature of U.S. person ▶ 	Date ▶ <b>10.19.09</b>
------------------	--	------------------------

**Purpose of Form**

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

**U.S. person.** Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

**Note:** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Foreign person.** If you are a foreign person, use the appropriate Form W-8 (see **Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities**).

**Nonresident alien who becomes a resident alien.**

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

ATTACHMENT

**Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended**

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. Employs fewer than 15 persons.
- b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

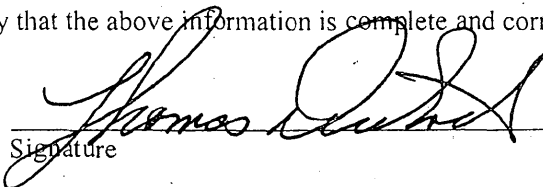
PATRICIA McALEER  
Name of 504 Person - Type or Print

DFM ASSOCIATES  
Name of Contractor(s) - Type or Print

10 CHRYSLER, SUITE A  
Street Address or P.O. Box

IRVINE, CA. 92618  
City, State, Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

  
Signature

PRESIDENT  
Title of Authorized Official

10.19.09  
Date

\*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."



**County Counsel Review Form**

Date: October 19, 2009  
 To: Warren Slocum, Assessors – County Clerk - Recorder  
 From: Brenda Carlson  
 Subject: Agreement Review and Approval

Contractor: DFM Associates. Inc.  
 Maximum Amount: \$1,200,000  
 Rate of Payment: N/A – Fixed Priced Software Lease Agreement

No changes on the standard agreement form  
 The following sections have been changed on the "standard" agreement:

Section No. & Title	Approved As Is [For County Counsel Use Only]	Modifications Required [For County Counsel Use Only]
<b>Section 12 - Compliance with Contractor Employee Jury Service Ordinance</b>	<i>ok</i>	
<i>Other minor changes</i>		
	<i>in order to be consistent with a software lease.</i>	

**Modifications** (Please specify modifications to be made below. Use additional paper if needed.):

Section 12, Jury Service Pay Requirement, was deleted as "Not Applicable", this is a Software Lease Agreement. There will be no San Mateo County residents performing services as a result of this contract.

Approve Agreement/Exhibits/Attachments  
 Approve Agreement/Exhibits/Attachments with the modifications that have been described

Brenda B. Carlson  
 Signature

October 19, 2009  
 Date