



REVISED

ALAMEDA COUNTY
AUDITOR-CONTROLLER AGENCY
PATRICK O'CONNELL
AUDITOR-CONTROLLER/CLERK-RECORDER

Agenda# _____, April 14, 2009

March 23, 2009

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, CA 94612-4305

Dear Board Members:

SUBJECT: AWARD A CONTRACT TO BUTTERFLY DIRECT MARKETING AND COMMUNICATIONS SERVICES, LLC FOR BULK MAILING SERVICES (PROCUREMENT CONTRACT #3909); INFORMAL REQUEST FOR QUOTE; AMOUNT \$99,000

RECOMMENDATION:

Approve and authorize your Board to execute a contract with Butterfly Direct Marketing and Communication Services, LLC (President: Samari Johnson), Hayward, CA, for bulk mailing services. The term of this contract shall be for one year beginning April 14, 2009 and ending on April 13, 2010 in the amount of \$99,000 (procurement contract #3909), with three one-year renewal options to be approved by your Board at the end of each term as required.

DISCUSSION/SUMMARY:

The Clerk-Recorder Office of the Auditor-Controller Agency is responsible for recording official public records. Once recorded, all documents must be returned to the recording parties pursuant to Government Code Section 27321.

Office of the Auditor-Controller
Steve Manning, Chief Deputy Auditor
1221 Oak St., Rm. 249
Oakland, CA 94612
Tel: (510) 272-6565
Fax: (510) 272-6502

Assistant Controller
Connie Land
1221 Oak St., Rm. 238
Oakland, CA 94612
Tel: (510) 272-6565
Fax: (510) 267-9414

There are approximately 1,400 documents that must be mailed back to the public daily. Each document must be sorted, folded, inserted and sealed into appropriate sized envelopes before being metered for postage and delivered to the United States Postal Office.

Eight part-time employees from the Alameda County Vocational Program (ACVP) previously performed this function. The ACVP implemented changes to their program and ended bulk mail service support to the Clerk-Recorder Office effective September 30, 2008.

SELECTION CRITERIA/PROCESS:

The Clerk-Recorder Office does not have the resources needed to manage the bulk mail services previously performed by the ACVP.

On June 5, 2008, the Auditor-Controller's Agency issued an informal request for quote (IRFQ) for bulk mailing services. Three quotes were solicited, in accordance with County procurement procedures, from certified small local emerging businesses that were known to provide the required services. Two responses were received and bidders were invited to attend a walk-through of the Agency's bulk mailing operations. Following the walk-through one of the bidders indicated that they would not be able to provide the required services for the bid price submitted.

Butterfly Direct Marketing & Communications, a local certified small business in Hayward, confirmed that they could provide the required bulk mailing services at the bid price and submitted the lowest bid.

In October 2008, the Clerk-Recorder began testing the services to be provided and has found them to be satisfactory and recommends awarding a one-year contract. Approval of this recommendation will ensure that important services to the public continue uninterrupted.

BID SUMMARY

Vendor	Location	SLEB Status	Bid Price Per Year
Butterfly Direct Marketing & Communications	Hayward, CA	Yes-pend	\$99,000
Pacific Color Graphics	Pleasanton, CA	Small	\$236,838

Butterfly Direct Marketing and Communication Services, LLC (Hayward, California) has over 27 years of experience in bulk mailing services. Awarding this contract represents 100% small and 100% local business participation.

FUNDING:

Funding for this contract is included in the Auditor-Controller FY 2008/2009 budget and will be requested in subsequent budget years. No additional appropriations are required and there will be no net increase in County cost.

Respectfully submitted,

A handwritten signature in black ink that reads "Steve Manning for". The signature is written in a cursive, flowing style.

Patrick O'Connell
Auditor-Controller

c: Susan S. Muranishi, County Administrator
Richard E. Winnie, County Counsel

CONTRACT SUMMARY

**BULK MAILING SERVICES
APRIL 14, 2009 – APRIL 13, 2010**

Contractor	Location	Local Participation		Small Local Participation	
		%	\$	%	\$
Butterfly Direct Marketing and Communication Services, LLC	Hayward, CA	100%	\$99,000	100%	\$99,000

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of April 2, 2009, is by and between the County of Alameda, hereinafter referred to as the "County", and Butterfly Direct Marketing and Communication Services, LLC, hereinafter referred to as the "Contractor".

WITNESSETH

Whereas, County desires to obtain bulk mailing services which are more fully described in Exhibit A hereto ("Bulk Mailing Services"); and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to County; and

Now, therefore it is agreed that County does hereby retain Contractor to provide Bulk Mailing Services, and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- Exhibit A Definition of Services
- Exhibit A-1 Scope and Specifications
- Exhibit B Payment Terms
- Exhibit C Insurance Requirements
- Exhibit D Debarment and Suspension Certification
- Exhibit E Contract Compliance Reporting Requirements

The term of this Agreement shall be from April 14, 2009 through April 13, 2010.

The compensation payable to Contractor hereunder shall not exceed Ninety Nine Thousand Dollars (\$99,000) for the term of this Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF ALAMEDA

CONTRACTOR/COMPANY NAME

By: _____
Signature

By: Samari Johnson
Signature

Name: _____
(Printed)

Name: Samari Johnson
(Printed)

Title: President of the Board of Supervisors

Title: President

Date: 4-2-09

Approved as to Form:

By: [Signature]
County Counsel Signature

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such amounts.

In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of County.

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the County determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, County may upon two week's notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments

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2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

3. **INSURANCE AND BOND:** Contractor shall at all times during the term of the Agreement with the County maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.
5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and

further, neither the Contractor nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

6. CONFORMITY WITH LAW AND SAFETY:

a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.

b. Accidents: If a death, serious personal injury or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.

c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.

7. DEBARMENT AND SUSPENSION CERTIFICATION: (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.

- b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
8. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.
9. TRAVEL EXPENSES: Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.
10. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.
11. OWNERSHIP OF DOCUMENTS: Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the County and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, respecting in any way the subject matter of this Agreement.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's

services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In Contractor's contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the County the aforesaid assignment and license rights as to that Contractor's Documents and Materials. Contractor agrees to defend, indemnify and hold the County harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the County harmless from any claims for infringement of patent or copyright arising out of such selection. The County's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the County by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.

13. **NOTICES:** All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
Auditor Agency
1221 Oak Street, Room 249
Oakland, CA 94612
Attn: Daisy Fong/Management Services

To Contractor: Butterfly Direct Marketing and Communication Services, LLC
23917 Clawiter Road
Hayward, CA 94545-1812
Attn: Samari Johnson, President

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. USE OF COUNTY PROPERTY: Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.

15. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
 - a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by the County, Contractor shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.

16. DRUG-FREE WORKPLACE: Contractor and Contractor's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812,

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including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement

17. **AUDITS; ACCESS TO RECORDS:** The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the County, make such books and records available to the County for inspection at a location within County or Contractor shall pay to the County the reasonable, and necessary costs incurred by the County in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to County for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three (3) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by County), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County's last payment to Contractor under this Agreement.

19. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. **TERMINATION:** The County has and reserves the right to suspend, terminate or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its Bulk Mailing Services shall not exceed \$99,000 for services provided hereunder prior to the effective date of said suspension, termination or abandonment.
21. **SMALL LOCAL AND EMERGING BUSINESS PARTICIPATION:** Contractor has been certified by the County as a small or emerging local business. As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision. However, should Contractor's status as a certified small or emerging local business change at any time during the term of this Agreement, Contractor shall comply with the County's Small and Emerging Local Business provision.
22. **FIRST SOURCE PROGRAM:** For contracts over \$100,000, Contractor shall provide County ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Contractor has available during the contract term before advertising to the general public.
23. **CHOICE OF LAW:** This Agreement shall be governed by the laws of the State of California.
24. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall

constitute the entire agreement between County and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

26. HEADINGS herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
27. ADVERTISING OR PUBLICITY: Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance.
28. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. ASSURANCE OF PERFORMANCE: If at any time County believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the Services as required by this Agreement, County may request from Contractor prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
30. SUBCONTRACTING/ASSIGNMENT: Contractor shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's prior written approval.

- c. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.
31. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.
32. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
33. **PATENT AND COPYRIGHT INDEMNITY:** Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County's prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.
- a. If Contractor is obligated to defend County pursuant to this Section 33 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with County's defense and/or settlement of such proceeding.
 - b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.

- c. Notwithstanding this Section 33, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
- 34. OTHER AGENCIES: Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.
- 35. SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

[END OF GENERAL TERMS AND CONDITIONS]

**EXHIBIT A
DEFINITION OF SERVICES**

1. Contractor shall provide Bulk Mailing Services in accordance with the “Scope” and “Specifications” sections within County’s Informal Request for Quote dated June 13, 2008. Said sections are incorporated herein by reference and attached hereto as Exhibit A-1.
 - a. In the event of any conflict (direct or indirect) among any of the above-referenced exhibits, the more stringent requirements providing the County with the broader scope of services shall have precedence, such that the scope of work described in the RFP sections and the scope of work described in Contractor’s proposal shall both be performed to the greatest extent feasible.
 - b. County and Contractor agree that the following Supplemental Provisions are incorporated into this Agreement, and that the Additional Provisions shall take precedence over inconsistent or conflicting provisions contained in the above-referenced exhibits.
2. Contractor project team will consist of the following Key Personnel and subcontractors, as applicable during the contract term:

Samari Johnson	President
Buford Johnson	Main Contact

Contractor agrees that it shall not transfer or reassign the individuals identified above as Key Personnel or substitute subcontractors without the express written agreement of County, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make a good faith effort to present to County an individual with greater or equal qualifications as a replacement subject to County’s approval, which approval shall not be unreasonably withheld.

3. The approval of County to a requested change shall not release Contractor from its obligations under this Agreement.

Exhibit A-1

Bulk Mailing Services

SCOPE

Retrieve mailing material (documents and supplies) from 1106 Madison Street, 2nd Floor Mail Room, Oakland daily: sort (sort to group the documents that are going to the same recipient with the same address), fold and insert single and multiple page documents into applicable size envelopes provided by Clerk-Recorder's Office (approximately 1400 mail pieces daily) or priority mail envelopes and/or boxes (write in mailing address of recipient if no label is being provided by the Clerk-Recorder's Office or the mail recipients); weight and apply pre-sort rate postage and deliver mailings to the Post Office no later than the next day of Contractor's receipt of mailings; return surplus envelopes and damaged items to Clerk-Recorder's and re-mail as required, at no additional cost to the County. Pick up from the Lobby also approximately 200 pieces of mail, apply pre-sort rate postage and deliver to the Post Office by the next day of Contractor's receipt of mailings.

Pick up outgoing mail (approximately 600 pieces) from 1221 Oak Street, Room 249 Oakland daily; sort, apply pre-sort rate postage and deliver mails to the Post Office by the next day of Contractor's receipt of mailings; perform special mailings on an as needed basis.

SPECIFICATIONS

1. Affix postage to envelope using prospective contractor's permit imprint or postage meter.
2. Mailings shall be delivered to the post office in a postal zip code order for the purpose of obtaining the pre-sort or best postage rates.
3. Deliver mailings to the Post Office for processing no later than one (1) day of Contractor's receipt of mailings.
4. Mailings pick up on Fridays need to be delivered to the Post Office the same day of Contractor's receipt of mailings using first class postage rate.
5. Contractor's facilities shall be in a secured, well-lighted, clean and properly maintained permanent structure. County reserves the right to conduct site visits to Contractor's premises prior to contract award to determine acceptability.
6. Contractor shall maintain the confidentiality of mailings and store all materials in a locked storage area.
7. Pricing shall include all other ancillary charges such as start-up costs, storage, pick-up and delivery. Any costs not clearly defined in Contractor's quotation will be paid by Contractor.
8. Contractor to provide a summary report containing the following information for Clerk-Recorder's mail:

Summary Report for Clerk-Recorder's Bulk Mailing Services				
Date Picked Up Mail	Date Mailed	Form of Mailing	Serial Number Range	Quantity
		(i.e. regular letter; flats; small package; parcels, etc...)	from...to....	Separate quantity count for each form of mailing

S.J.

**EXHIBIT B
PAYMENT TERMS**

1. County will pay Contractor upon successful completion and acceptance of the following services listed below, within thirty (30) days, upon receipt of invoice.

Retrieve mailing material (documents and supplies) from 1106 Madison Street, 2nd Floor Mail Room, Oakland daily: sort (sort to group the documents that are going to the same recipient with the same address), fold and insert single and multiple page documents into applicable size envelopes provided by Clerk-Recorder's Office or priority mail envelopes and/or boxes (write in mailing address of recipient if no label is being provided by the Clerk-Recorder's Office or the mail recipients); weight and apply pre-sort rate postage and deliver mailings to the Post Office no later than the next day of Contractor's receipt of mailings; return surplus envelopes and damaged items to Clerk-Recorder's and re-mail as required, at no additional cost to the County.

Contractor to provide a summary report containing the following information for Clerk-Recorder's mail:

Summary Report for Clerk-Recorder's Bulk Mailing Services

Date Picked Up Mail	Date Mailed	Form of Mailing	Serial Number Range	Quantity
		(i.e. regular letter; flats; small package; parcels, etc...)	from...to....	Separate quantity count for each form of mailing

Contractor to set-up its mail machine to track the postage charges by day, transaction, and organizational number 140100, 140200, & 140300. At the end of each month, contractor to forward a monthly summary of daily transactions by each organizational number.

2. Invoices will be approved by the County, Clerk-Recorder's Office.
3. Total payment under the terms of this Agreement will not exceed the total amount of Ninety Nine Thousand Dollars (\$99,000). This cost includes all taxes and all other charges.
4. Upon award of this Agreement by County, County and Contractor shall forthwith jointly create a schedule governing the timely performance of Contractor's services hereunder. The agreed upon schedule shall be incorporated into this Agreement upon its adoption by the parties and thereafter Contractor shall perform all services under this Agreement in conformance with the schedule.
5. Upon notice to proceed from County, Contractor shall perform in accordance with the following schedule:

S.J.

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
 04/02/2009

PRODUCER (415) 386-2263
 Jessica Liu Insurance Services, Inc
 3428 Balboa Street

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.

San Francisco CA 94121-
 INSURED
 Butterfly Direct Market & Communication LLC
 23917 Clawiter Road

INSURERS AFFORDING COVERAGE	NAIC#
INSURER A: Safeco Insurance Company	
INSURER B: Financial Indemnity Co.	
INSURER C:	
INSURER D:	
INSURER E:	

Hayward CA 94545-

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.

INSTR. ADD'L TR. INSTR.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJ. <input type="checkbox"/> LOC	02-8P-727820-1	08/25/2008	08/25/2008	EACH OCCURRENCE: 1,000.0 DAMAGE TO RENTED PREMISES (EA OCCURRENCE): 1,000.0 MED EXP (Any one person): 10.0 PERSONAL & ADV INJURY: 1,000.0 GENERAL AGGREGATE: 2,000.0 PRODUCTS - COMP/OP AGG: 1,000.0
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	043511067	03/30/2009	03/30/2010	COMBINED SINGLE LIMIT (EA ACCIDENT): 1,000.0 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO		/ /	/ /	AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$		/ /	/ /	EACH OCCURRENCE AGGREGATE
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER		/ /	/ /	<input type="checkbox"/> NO STATE/LOCAL LIMITS <input type="checkbox"/> OTH-EG E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT

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

The Additional Insured are the County of Alameda, its board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives.
 Except 10 days for non-payment.

CERTIFICATE HOLDER

()
 COUNTY OF ALAMEDA, ITS BOARD OF SUPERVISORS, THE INDIVIDUAL MEMBERS THEREOF, AND ALL COUNTY OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES
 1401 LAKESIDE DRIVE SUITE 907
 OAKLAND, CA 94612-4305

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

COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION
For Procurements Over \$25,000

The bidder, under penalty of perjury, certifies that, except as noted below, bidder, its Principal, and any named and unnamed subcontractor:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessary result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

BIDDER: Samar Johnson

PRINCIPAL: Samar Johnson TITLE: President

SIGNATURE: Samar Johnson DATE: 4-2-09

EXHIBIT E**COUNTY OF ALAMEDA
CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within 5 business days in the System, immediately enter payments made to subcontractors and ensure that subcontractors confirm they received payments within 5 business days in the System. Subcontractors shall confirm their payments received from the prime contractor within 5 business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County should schedule a representative from their office/company, along with each of their subcontractors, to attend training. The training schedule may be viewed online at http://www.elationsys.com/elationsys/support_1.htm or call Elation Systems at (510) 764-1870. A special access code will be provided to contractors and subcontractors participating in this contract awarded to allow use of the System free of charge.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.

S.J.