

STAFF REPORT*CITY OF OCEANSIDE*

DATE: May 7, 2014

TO: Honorable Mayor and City Councilmembers

FROM: Financial Services Department

SUBJECT: **AMENDMENT 2 TO PROFESSIONAL SERVICES AGREEMENT WITH INFOSEND INC., FOR THE PRINTING AND DELIVERY OF UTILITY BILLS AND BUSINESS LICENSE DOCUMENTS**

SYNOPSIS

Staff recommends that the City Council approve Amendment 2 in an amount not to exceed \$342,000 to the Professional Services Agreement (PSA) with Infosend Inc., for the printing and distribution of utility bills and business licenses, extending the term of the agreement by one year from May 18, 2014 to May 18, 2015 and applying a 2.7 percent Consumer Price Index (CPI) increase; and authorize the City Manager to execute the amendment.

BACKGROUND

In May 2011 the City Council approved a three-year PSA with Infosend Inc. for the design, printing and distribution of utility bills with an expiration date of May 16, 2014. By October 2011, Infosend was receiving electronic billing files and creating and distributing the bills and delinquent notices.

In Amendment 1 to the PSA, approved in April 2012, Infosend services were extended to include the creation and distribution of business license documents. These services went live in July 2012 with the implementation of new business licensing software.

ANALYSIS

Infosend has been providing excellent service to the City of Oceanside, has been flexible, and effectively meets the City's needs with minimal effort by City staff. The services have been delivered timely, accurately and on budget during the initial three years of the agreement.

The initial contract set the pricing for the entire three year agreement period without any increases to Infosend. The postage rates are a direct pass through from the United States Postal Services (USPS) Department. Any USPS rate increase are automatically passed onto the City but the per item costs for Infosend's services have not changed

since the entering into the agreement in 2011. Infosend, an Orange County company, requested a consumer price index (CPI) increase equal to the Los Angeles, Riverside and Orange County CPI increase from 2011 to 2014. The CPI increase during that time frame is 2.7 percent and staff is recommending this percentage be applied to the per item charges.

FISCAL IMPACT

The not to exceed cost of Amendment 2 is \$342,000 for a one-year period from May 18, 2014 to May 18, 2015. The estimate is based on two years of historical noticing information with the addition of a 2.7 percent CPI increase for the Orange County area from the initiation of the contract in May 2011 thru January 2014 and accounting for current USPS mailing rates. The expense will be funded from existing budget in account 212010101.5305 for FY13/14 and will be included in the proposed FY14/15 budget.

CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council approve Amendment 2 in an amount not to exceed \$342,000 to the Professional Services Agreement (PSA) with Infosend Inc., for the printing and distribution of utility bills and business licenses, extending the term of the agreement by one year from May 18, 2014 to May 18, 2015 and applying a 2.7 percent Consumer Price Index (CPI) increase; and authorize the City Manager to execute the amendment.

PREPARED BY:



Sheri Brown
Financial Services Division Manager

SUBMITTED BY:



Steven R. Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



James R. Riley, Financial Services Director



ATTACHMENTS:

- 1) Amendment 2
- 2) Amendment 1
- 3) Professional Services Agreement

**CITY OF OCEANSIDE
AMENDMENT 2 TO
PROFESSIONAL SERVICES AGREEMENT**

PROJECT: INFOSEND PRINT AND DISTRIBUTION SERVICES

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment"), dated May 18, 2014 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Infosend Inc., a California Corporation, hereinafter designated as "CONSULTANT."

RECITALS

WHEREAS, City and Consultant are the parties to that certain Professional Services Agreement dated May 18, 2011, hereinafter referred to as the "Agreement", wherein Consultant agreed to provide certain services to the City as set forth therein;

WHEREAS, City and Consultant are the parties to Amendment 1 of the Professional Services Agreement dated May 16, 2012 wherein Consultant agreed to provide services for business licensing documents to the City as set for the therein;

AMENDMENT

NOW, THEREFORE, as set forth herein, the parties hereto do mutually agree that the Agreement shall be amended as follows:

1. **TERM**

The term of the agreement is extended by one year from May 18, 2014 to May 18, 2015.

2. Section 9 - **COMPENSATION**

The City agrees to a requested 2.7% Consumer Price Index (CPI) increase in the per unit cost with the one year cost not to exceed \$97,000. Postage will continue to be billed at the USPS rates and will not exceed \$245,000 for the one year period of this amendment. Attached Exhibit A outlines the per unit costs.

Additional services not included in Exhibit A may only be added through a contract amendment approved by the City of Oceanside City Council. Compensation for such additional services shall be paid as set forth in Infosend's contract rates in effect at the time the additional services are approved by the City Council.

INFOSEND PRINT AND DISTRIBUTION SERVICES

No work shall be performed by Infosend in excess of the total contract price of \$342,000 without prior written approval of the Financial Services Director. Infosend shall obtain approval by the Financial Services Director prior to performing any work, which results in incidental expenses to the City.

3. **TERMINATION OF AGREEMENT**. This Agreement may be terminated by the City for any reason by providing Consultant thirty (30) days written notice. If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.

4. Except as expressly set forth in this Amendment, the Agreement shall remain in full force and effect and is hereby ratified and reaffirmed.

SIGNATURES. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Amendment on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF the parties hereto being duly authorized on behalf of their respective entities to execute this Amendment, do hereby agree to the covenants contained in the Agreement, including this Amendment and have caused this Amendment to be executed by setting hereunto their signatures on the dates set forth below.

INFOSEND, INC.

CITY OF OCEANSIDE

By: Russ Perez / COO
Name/Title

By: Steven R. Jepsen, City Manager

Date: 4/9/11

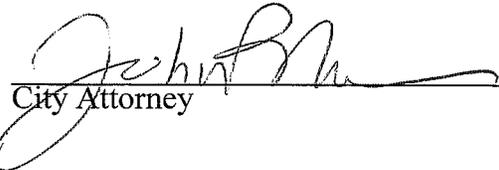
Date: _____

By: _____
Name/Title

APPROVED AS TO FORM:

Date: _____

33-0748516
Employer ID No.


City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

County of Orange }

On 4/9/14 before me, Lori N. Hing, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Russ Rezaei
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature [Signature]
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: City & Orange Amendment 2 to Professional Services Agreement

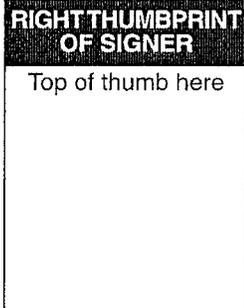
Document Date: 4/9/14 Number of Pages: 4

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Russ Rezaei

- Individual
- Corporate Officer — Title(s): COO
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

INFOSEND PRINT AND DISTRIBUTION SERVICES

Exhibit A -Pricing Schedule

Service Description:

24 lb. 8.5" x 11" custom preprinted color forms with extra clean perforated remittance stub. Vendor will provide eight different form types for the following statements: Regular Bills, Deposit Bills, Past Due Notices, Disconnection Notices, Final Bills, Final Delinquent Notices 1 and 2 (in both English and Spanish), Helping Hands Notices.

Standard #9 single window reply envelope, Custom 1-color #10 single window outgoing envelope, Custom 1 color 9" x 12" flat envelope. All envelopes are security tinted.

Per Piece Cost of Service Includes: Custom Bill Design, Processing, CASS Certified Address Validation, Electronic Presorting, Custom Forms, Custom Envelopes, Simplex Printing, File Transfer and Process Confirmation Reports, Quality Control, Folding, Selective Inserting, Metering, Same Day Delivery to the Anaheim Postal Hub and EBP.

Fees are subject to change annually on the anniversary date of the Agreement to reflect the current U.S. Consumer Price Index (CPI) for the Orange County, CA area.

<u>Service Description</u>	<u>May 2011 – May 2014</u>	<u>Proposed May 2014 -2015</u>
Utility Statements	\$0.068	\$0.06984/Page
Postage (pass through)	Actual First Class Presorted Postage	
Additional pages	\$0.07/Page	\$0.07189/Page
City Provided Inserts	\$0.01	\$0.01027
Custom Electronic Bill Presentment (EBP) (Price for Utility Bills - Includes 6 Months Retention and Hosting)	\$0.004	\$0.00411
Address Correction Service	\$0.40	\$0.35945/correction
Programming Fees/Professional Services	\$150/hour	\$154.00/hour
Set-up Fee (applications already live)	\$0.00	\$0.00
File Transfer Fee	\$0.00	\$0.00
Minimum Download Fee	\$0.00	\$0.00
Inventory/Storage Fee	\$0.00	\$0.00
Business License Documents	\$0.16	\$0.16432
Code Enforcement, New Business Invoices	\$0.24	\$0.24648
Print Image Archive (Price for Business Tax Docs)	\$0.008 \$0.01 \$0.014	\$0.00822/3mos \$0.01027/6mos \$0.01438/12mo
FinalDoc CD	\$95/CD +S&H	\$97.565/CD +S&H
Final Doc Transfer	\$0.01	\$0.01027/document
Multiple Page Mail Pieces – Hand work surcharge	\$0.25/mail piece	\$0.25675/mail piece

INFOSEND PRINT AND DISTRIBUTION SERVICES

<u>Materials</u>	<u>May 2011 – May 2014</u>	<u>Proposed May 2014 -2015</u>
Forms - Utility Preprinted	\$0.0129	\$0.01325
#9 Utility return envelope (InfoSend Standard)	\$0.0115	\$0.01181
#10 Utility single window outgoing envelope	\$0.0166	\$0.01705
Forms - Business License, Delinquent, Certificate, Code Enforcement, New Business Invoice	\$0.014	\$0.01438
#10 InfoSend Standard Envelope	\$0.014	\$0.01438
#9 InfoSend Standard Envelope	\$0.013	\$0.01335
Flat Single Window Envelope	\$0.16	\$0.16432

CITY OF OCEANSIDE
AMENDMENT 1 TO
PROFESSIONAL SERVICES AGREEMENT

PROJECT: INFOSEND PRINT AND DISTRIBUTION SERVICES

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment"), dated May 16, 2012 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Infosend Inc., a California Corporation, hereinafter designated as "CONSULTANT."

RECITALS

WHEREAS, City and Consultant are the parties to that certain Professional Services Agreement dated May 18, 2011, hereinafter referred to as the "Agreement", wherein Consultant agreed to provide certain services to the City as set forth therein;

AMENDMENT

NOW, THEREFORE, as set forth herein, the parties hereto do mutually agree that the Agreement shall be amended as follows:

1. Scope of Work will include the following key tasks as identified on the proposal dated March 28, 2012 (attached):
 - a. Ongoing printing and mailing of business license documents including
 - i. Invoices
 - ii. Renewal Notices
 - iii. Certificates
 - iv. Delinquent Notices
 - v. Code Enforcement Letters
 - b. Professional services as agreed upon during the term of the amendment.
 - c. Provision of materials necessary to produce and mail documents.
 - d. Image archiving services.
2. Compensation for this scope of work shall not exceed \$50,000. The City will be billed for services on a per unit basis as indicated in the proposal dated March 28, 2012. Postage will be billed as a pass through from the United States Postal Service with a one-time deposit upon commencement of services by Consultant.
3. Term of agreement shall coincide with the original agreement.
4. Except as expressly set forth in this Amendment, the Agreement shall remain in full force and effect and is hereby ratified and reaffirmed.
5. City shall have the right to terminate this Amendment for convenience. In this event, CONSULTANT shall be paid for the reasonable value of the services

INFOSEND PRINT AND DISTRIBUTION SERVICES

provided as of the termination.

SIGNATURES. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Amendment on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF the parties hereto being duly authorized on behalf of their respective entities to execute this Amendment, do hereby agree to the covenants contained in the Agreement, including this Amendment and have caused this Amendment to be executed by setting hereunto their signatures on the dates set forth below.

INFOSEND, INC.

By: [Signature] / RUSS BEZAE
Name/Title C.O.O.

Date: 5-1-12

CITY OF OCEANSIDE

By: [Signature]
Peter Weiss, City Manager

Date: 5-17-12

By: [Signature]
Name/Title MAHMOUD REZAI
Date: 5-1-12
President & CEO

APPROVED AS TO FORM:

[Signature]
City Attorney

33-0748516
Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

County of Orange }

On 5/1/2012 before me, Lori N. Hing, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Russ Rezaei
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature [Handwritten Signature]
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Independent Print and Distribution Services

Document Date: 5/1/12 Number of Pages: 1

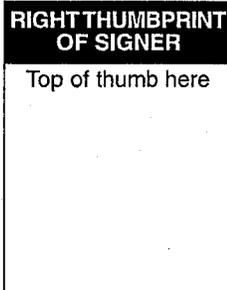
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Russ Rezaei

- Individual
- Corporate Officer — Title(s): COO
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

County of Orange }

On 5/31/12 before me, Lori N. Hing, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Mahmood Rezaei
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature [Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Infosend Print and Distribution Services

Document Date: 5/1/12 Number of Pages: 1

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Mahmood Rezaei

- Individual
- Corporate Officer — Title(s): President & CEO
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing:

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing:

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: Infosend Print and Distribution Services

THIS three year AGREEMENT, dated from May 18, 2011 to May 18, 2014 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Infosend Inc., a California Corporation, hereinafter designated as "Infosend."

This agreement utilizes the CITY of Oceanside's Administrative Directive relating to the Procurement of Goods and Services, Section IX. Procurement Clauses; Subsection F. Cooperative Purchasing Agreements - referenced as; voluntary cooperative purchasing agreement. CITY will "piggy-back" on the CITY of Anaheim's agreement with Infosend to procure supplies and services based on the Anaheim agreement dated October 13, 2009, which includes the pricing schedule for the CITY of Anaheim's cost of services, referenced in Exhibit B attached hereto. The CITY of Anaheim's agreement with Infosend was approved based on Infosend's contract award through the RFP process.

The CITY specifically reserves the right to reduce the Scope of Work and to delete a portion or portions of the services or terminate the Agreement in its sole discretion as determined necessary, by providing a thirty day written notice to Infosend. The CITY will compensate Infosend by the Agreement termination date for all actual outstanding postage expenses, and unpaid billed monthly services due to Infosend.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The CITY of Oceanside is purchasing printing, mailing and related billing design services for the CITY. Infosend represents that it is qualified to provide the services in a secure environment more specifically outlined in the project detail Scope of Work in Exhibit A.
 - 1.1 Infosend shall provide monthly print and distribution services, high-speed laser printing services, courier services and related services to produce approximately 43,000 - 44,708 bill printing and mailing services as well as approximately 5,500 - 5,795 delinquent notices, approximately 1,800 - 2,277 warning door-hanger tags and approximately 400 - 506 lock-off notices, and approximately 185,000 annual water quality reports.
 - 1.2 Infosend will design a new invoice format and include artwork approved and provided by the CITY. Infosend will provide a color design proof of the new invoice format with artwork for sign-off approval provided by the Chief Information Officer

Infosend Print and Distribution Services Agreement

and the Director of Finance. Printing of the new invoices will begin after all required approvals from the CITY are received.

- 1.3 On an annual basis the utility bill artwork will be replaced with a new image provided by the CITY, if requested by the CITY. Infosend will replace the existing invoice image with the new image. The cost of this service is included in the total contract cost if the CITY provides at least three months advanced notice of stock changes to enable existing on-hand stock to be depleted. The CITY is responsible for the cost of stock on-hand if a change is made that must be implemented in less than three (3) months.
- 1.4 Infosend is not charging the CITY any additional project, invoice design/creation or data file set-up charges. All project costs are included in the not to exceed contract cost.
- 1.5 The data file will be sent to Infosend in an encrypted format approved by the CITY. Infosend in turn will upload and process the data file in a secure format and will maintain data security industry standards to protect the customer data. Refer to attached Exhibit A, which outlines the project and timeline milestones.
- 1.6 The CITY reserves the right to audit the facilities, and data security of Infosend and all Infosend sub-contractors.
- 1.7 The monthly billing statement must include cost details separated in column format. The separate cost headings must include postage, delivery and Infosend services.
- 1.8 All pricing changes must be submitted in writing to the CITY thirty (30) days in advance of any pricing changes.
- 1.9 Infosend will work closely with the Chief Information Officer in performing work in accordance with this Agreement in order to receive clarification as to the result which the CITY expects to be accomplished. The Chief Information Officer, under the authority of the Financial Services Director, shall be the CITY'S authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The Chief Information Officer may delegate authority in connection with this Agreement to the Chief Information Officer's designees.

2. **PROFESSIONAL SERVICES PROVIDED BY INFOSEND.** The CITY hereby engages Infosend to perform custom and high-quality invoice design, upload and process the data file in a secure format, print and distribution services, high-speed laser printing services, courier services and related services to produce bill printing and mailing services as well as delinquent notices, warning door-hanger tags and lock-off notices, door-hanger tags, and the annual water quality report in accordance with the specifications described in Exhibit A (collectively the "Deliverables"). The Deliverables shall be delivered free of "Material Errors" and shall be delivered in accordance with the schedule and specifications set forth in Exhibit A. For purposes of this Agreement, "Material Errors" shall be defined as those material elements of the Deliverables that are not in compliance with the specifications or that do not function or execute properly in accordance with the specifications. As a matter of clarity, refining, modifying, correcting, and adjusting any deliverable such that it operates in accordance with the specifications, or correction of material errors, shall be deemed

Infosend Print and Distribution Services Agreement

included within the services.

3. **SERVICES PROVIDED BY CITY.** CITY will be solely responsible for the accuracy, integrity, completeness, transmission file format and reliability of all data and information provided to Infosend for processing pursuant to this Agreement. CITY will transmit such data to Infosend's service facility where Infosend will convert it to Infosend's system.

4. **INDEPENDENT CONTRACTOR.** Infosend's relationship to the CITY shall be that of an independent contractor. Infosend shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the CITY Chief Information Officer. Infosend shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder for this project without the prior written authorization by the CITY Chief Information Officer. Infosend shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. Any discrepancies must be reported to the CITY and the employee is not authorized to work on any project outlined in the agreement.

5. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, Infosend hereby certifies that Infosend is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and Infosend will comply with such provisions, and provide certification of such compliance as a part of this Agreement.

6. **LIABILITY INSURANCE.** Infosend shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of Infosend, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.
 - 6.1 Infosend shall maintain liability insurance in the following minimum limits:

<u>Comprehensive General Liability Insurance</u>	
(bodily injury and property damage)	
Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*
<u>Commercial General Liability Insurance</u>	
(bodily injury and property damage)	
General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

Infosend Print and Distribution Services Agreement

Automobile Liability Insurance

\$ 1,000,000

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of Infosend under this Agreement.

- 6.2** If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by Infosend to restore the required limits. Infosend shall also notify the CITY'S Chief Information Officer promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the Infosend resulting from any of Infosend's work.
- 6.3** All insurance companies affording coverage to Infosend for the purposes of this Section shall add the CITY of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the CITY as additional insured shall be primary insurance and other insurance maintained by the CITY of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.
- 6.4** All insurance companies affording coverage to Infosend pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 6.5** All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 6.6** Infosend shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable endorsements, in a form satisfactory to the CITY Attorney, concurrently with the submittal of this Agreement.
- 6.7** Infosend shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by Infosend to provide such a substitution and extend the policy expiration date shall be considered a default by Infosend and may subject Infosend to a suspension or termination of work under the Agreement.
- 6.8** Maintenance of insurance by Infosend as specified in this Agreement shall in no way be interpreted as relieving the Infosend of any responsibility whatsoever and Infosend may carry, at its own expense, such additional insurance as it deems necessary.

Infosend Print and Distribution Services Agreement

7. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, Infosend shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of One Million Dollars (\$1,000,000.00). Infosend shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.
8. **INFOSEND'S INDEMNIFICATION OF CITY.** Infosend shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the negligent acts, errors or omissions or wrongful acts or conduct of Infosend, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. Infosend's indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, Infosend at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of Infosend.

Infosend's indemnification of CITY shall not be limited by any prior or subsequent declaration by Infosend.

9. **COMPENSATION.** Infosend's compensation for all work performed in accordance with this Agreement over the next three years shall not exceed the total contract price of \$ 846,528. Refer to Exhibit A for per unit costs. All postage for this agreement will be paid by Infosend and itemized on the monthly billing to the CITY for reimbursement. Compensation is set forth as follows: Infosend services: \$211,971, Postage and Delivery: \$634,557.

Additional services not included in Exhibit A may only be added through a contract amendment approved by the CITY of Oceanside CITY Council. Compensation for such additional services shall be paid as set forth in Infosend's contract rates in effect at the time the additional services are approved by the CITY Council.

No work shall be performed by Infosend in excess of the total contract price without prior written approval of the CITY Chief Information Officer or the Financial Services Director. Infosend shall obtain approval by the CITY Chief Information Officer prior to performing any work, which results in incidental expenses to CITY.

Infosend Print and Distribution Services Agreement

- 9.1 Notwithstanding the above, CITY will compensate Infosend on a monthly basis for Infosend's actual postage costs. Within thirty (30) calendar days of the Effective Date of this agreement, CITY will advance to Infosend the sum of Fifty Thousand Dollars and Zero Cents (\$50,000.00) for Infosend to draw against for actual postage costs only incurred in performance of the services provided herein, until such time as the parties have established a monthly billing cycle set forth in section 9.3 of this Agreement.
- 9.2 CITY shall be responsible for compliance with USPS standards to update mailing addresses for customers. Infosend shall pay all federal and state taxes (Infosend will collect sales tax from the CITY for all purchased materials), levies, duties and assessments of every nature due in connection with provisions of the Services pursuant to this Agreement and shall indemnify and hold harmless CITY from any liability on account of all such taxes, levies, duties, assessments and deductions.
- 9.3 CITY agrees to pay Infosend for services satisfactorily provided, and postage expenses paid during the preceding month within thirty (30) days after receipt of the monthly submittal. In no event will the sum of all monthly payments, including final payment be greater than the not-to-exceed fees outlined in section 9 of this Agreement. Upon termination or conclusion of this Agreement whichever occurs first, the parties will reconcile the sum advanced for postage costs against Infosend's remaining actual postage costs, if any. In no event later than thirty (30) calendar days following such reconciliation, Infosend shall reimburse CITY the balance of any and all sums remaining, if any, from the CITY's original postage costs advanced to Infosend.
10. **WARRANTY.** Infosend warrants that all services, work product, maintenance and deliverables performed or provided under this AGREEMENT shall be performed consistent with generally prevailing professional standards. Infosend shall maintain during the course of this AGREEMENT the standard of care, skill diligence and professional competency for such work product deliverables and services. Infosend agrees to require all of Infosend's agents, by the terms of its contracts, to provide services, work products, and deliverables at the same standard of care, skill diligence and professional competence required of Infosend.
- 10.1 The CITY must report any deficiencies in the work product or deliverables of Infosend in writing within ten (10) working days after the acceptance of the delivery of the work product or deliverable to the CITY, as acceptance and delivery are defined particularly as to that service or task in the Scope of Work Exhibits A.
- 10.2 The CITY's primary remedy for any breach of the above warranty shall be the re-performance of the service without additional cost to the CITY.
11. **INTELLECTUAL PROPERTY.** All software, computer programs, source code, processes, techniques, trade secrets or other intellectual property rights used or relating to Infosend's provision of the services other than those developed by Infosend specifically for the purpose of processing the CITY's data shall be and remain the sole and exclusive property of Infosend. Notwithstanding the above, the CITY shall retain all rights to utilize the bill design developed as part of the services

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without additional compensation to Infosend. CITY shall not copy, modify, distribute, display, sublicense, rent, reverse engineer, decompile or dis assemble any such software or intellectual property or permit anyone to do so on the CITY's behalf.

- 11.1** Compliance with Laws. In the performance of this Agreement, Infosend shall abide by all and conform to (and shall ensure that Infosend's subcontractors, if any shall abide by and conform to) any and all applicable laws, statues, safety rules, and practices of the United States, the State of California, the Charter and Ordinances of the CITY of Oceanside, and any other local laws (hereinafter referred to as "Laws and Practices"). Further, Infosend warrants that all work done under this Agreement shall be in strict compliance with such Laws and Practices, including, but not limited to, Cal/OSHA regulations.
- 11.2** Infosend shall dispose of all materials used in conjunction with the performance of this Agreement in strict compliance with all local, state and federal environmental and/or waste management rules, regulations, laws, statues and practices.
- 11.3** Infosend and CITY hereby acknowledge and agree that all confidential information is highly confidential and to be used solely as authorized by this Agreement. At all times during the performance of the Agreement and after its termination Infosend; Infosend sub-contractors, and CITY shall maintain the confidentiality of all confidential information and shall not disclose to any third party other than in accordance with this Agreement. Prior to disclosure of any confidential information to its sub-contractors or agents, Infosend and CITY shall inform them of their duties of confidentiality. Infosend and CITY shall effect and maintain all reasonable security measures to safeguard all confidential information and prevent access to or use of or copying of it by any unauthorized person. Notwithstanding the above, any party shall be free to disclose confidential information: (a) which was already lawfully in its possession prior to receiving it from the other party, (b) which is independently received from a third party and said party has no reason to believe that said third party received or disclosed said information unlawfully or in violation of the terms of this Agreement. (c) that which was in the public domain at the time of disclosure through no breach of this Agreement. (d) was independently developed and without reference to the other party's confidential information (e) is required to be disclosed pursuant to a court order or as otherwise compelled by law or (f) is identified by a party as no longer being proprietary.
- 12.** **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the following timing requirements shall be strictly adhered to unless otherwise modified in writing as set forth in Exhibit A. All work shall be completed in every detail to the satisfaction of the Chief Information Officer. The CITY will provide the first data file to Infosend by the end of the third week after the contract is approved by the CITY Council and signed by the CITY Manager. Failure by Infosend to strictly adhere to the timing requirements may result in termination

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of this Agreement by the CITY and the assessment of damages against Infosend for the delay.

- 12.1** For all time periods not specifically set forth herein, Infosend shall respond in the most expedient and appropriate manner under the circumstances, by telephone, e-mail, hand delivery or mail.
- 12.2** The CITY may charge Infosend up to \$0.50 per item that is not delivered, and is returned to the CITY as undeliverable if Infosend was responsible for the delivery failure. Infosend will notify the CITY upon completion of any outstanding contract item(s). For a period not to exceed thirty (30) calendar days in duration ("Final Test Period"), the CITY may evaluate the operation of the daily water utility bill printing and mailing services, in a test environment or using test data. If the CITY reasonably determines that the operational process of producing the daily water utility bill printing and mailing services are substantially impaired by one or more material errors in the design, graphics, code or programming, the CITY will so notify Infosend in writing within seven (7) calendar days of the completion of the Final Test Period ("Adverse Notification"), specifying in sufficient detail the nature of the error(s). Upon receipt of the Adverse Notification, Infosend will correct any identified and reproducible material errors in the design, graphics, code or programming within a reasonable time and the CITY may retest the daily water utility bill printing and mailing services for as many as fifteen (15) additional calendar days. Final Acceptance will be deemed to occur when a) The CITY notifies Infosend that the daily water utility bill printing and mailing services successfully passed the CITY's testing; b) the Test Period or subsequent retesting period(s) are completed without another Adverse Notification being received by Infosend from the CITY.
- 12.3** Infosend shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of Agreement by Infosend, and CITY may withhold any payments to Infosend for the purpose of set-off until such time as the exact amount of damages due CITY from Infosend is determined. In addition, CITY may pursue all remedies available under the law for breach of this Agreement. The waiver by either party of any breach to this Agreement shall constitute a waiver as to any succeeding breach.
- 13.** **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and Infosend concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.
- 14.** **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY. Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

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- 15. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by a signed amendment to the agreement. The signed amendment for additional services will require the approval of the Oceanside City Council.

- 16. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Infosend and the CITY.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

INFOSEND INC.
By: 
Name/Title

CITY OF OCEANSIDE
By: _____
CITY Manager

By: MAHMOOD REZAI, President
Name/Title & CEO

APPROVED AS TO FORM:

CITY Attorney

33-0248516
Employer ID No.

NOTARY ACKNOWLEDGMENTS OF INFOSEND MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

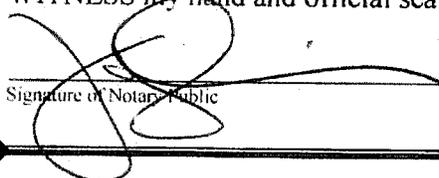
On 5-10-11 before me, Joey E. Heller-Ennis, Notary Public
(Here insert name and title of the officer)

personally appeared MAHMOOD Reza

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she they executed the same in his her their authorized capacity(ies), and that by his her their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


 Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

<p>DESCRIPTION OF THE ATTACHED DOCUMENT</p> <p><u>Occaside Service Agreement</u> <small>(Title or description of attached document)</small></p> <p>_____ <small>(Title or description of attached document continued)</small></p> <p>Number of Pages <u>9</u> Document Date <u>5-10-11</u></p> <p>_____ <small>(Additional information)</small></p>

<p>CAPACITY CLAIMED BY THE SIGNER</p> <p><input type="checkbox"/> Individual (s)</p> <p><input type="checkbox"/> Corporate Officer</p> <p>_____ <small>(Title)</small></p> <p><input type="checkbox"/> Partner(s)</p> <p><input type="checkbox"/> Attorney-in-Fact</p> <p><input type="checkbox"/> Trustee(s)</p> <p><input type="checkbox"/> Other _____</p>

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~ is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document