



**THE CITY OF SAN MARCOS
SERVICES CONTRACT
OUTSOURCING OF UTILITY BILLS AND NOTICES
#218-143**

This **Agreement** (this “**Agreement**”) is entered into by and between THE CITY OF SAN MARCOS, a municipality in the State of Texas (“**CITY**”), and INFOSEND, INC., whose address is 4240 East La Palma Avenue, Anaheim, CA 92807 (“**CONTRACTOR**”), and is effective for all purposes as of the date of the last signature to this Agreement (“**Effective Date**”).

City and Contractor agree as follows:

1. **Services.** Contractor will perform the Services (“**Services**” or “**Project**”) and provide deliverables (“**Deliverables**”) set forth in **Exhibit A**, attached and incorporated for all purposes, to the satisfaction of City.
2. **Term.** The term (“**Term**”) of this Agreement will commence on the Effective Date, and will continue for one (1) year term, unless sooner terminated as provided herein. The contract may be extended for three (3) additional one (1) year periods, provided all terms and conditions remain in full force and effect except for the contract period being extended or any price redetermination. This option, if exercised, is to be executed in the form of an Authorization of Change in Services, to be issued no sooner than ninety days (90) prior to expiration of this contract, nor later than the final day of the contract period. This option to extend requires the mutual agreement of both parties. Refusal by either party to exercise this option to extend will cause the contract to expire on the original or mutually agreed upon date. The total period of the contract, including all extensions as a result of exercising this option, will not exceed a maximum combined period of four (4) years.
3. **Compensation.** Contractor’s fees for the Services are set forth in **Exhibit A**, attached and incorporated for all purposes for an amount not to exceed \$1,050,000.00 for the full four (4) year term of the Agreement. City will pay to Contractor compensation for performance of the Services within thirty (30) days after receipt of an appropriate invoice (“**Invoice**”) and City’s approval of Services. Payment will be made in accordance with the Texas Prompt Payment Act, currently codified in Chapter 2251, *Texas Government Code*. Payment for delivery of Services, and rendered will not be unreasonably withheld or delayed. If City disapproves any amount submitted for payment by Contractor, City will give Contractor specific reasons for disapproval in writing within a reasonable time. Upon resolution of any disputed charges, Contractor will re-invoice such remaining charges to City.

WARRANTIES, TERMS, AND REPRESENTATIONS.

4. **Compliance with Laws and Policy.** Contractor warrants and agrees that Contractor will perform the Services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any Service performed on premises owned or controlled by City, Contractor warrants and agrees that Contractor will perform the Services in compliance with all City’s Rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs. For purposes of this Agreement, “**Standard Terms and Conditions**” means the Standard Terms and Conditions of the City of San Marcos (found at <http://www.sanmarcostx.gov/DocumentCenter/Home/View/6608>).
- 4.1 Contractor will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local laws, regulations or ordinances, required for the performance of the Services.
5. **Performance.** Contractor represents that Contractor has the personnel, experience, and knowledge necessary to qualify Contractor for the particular duties to be performed under this Agreement. Contractor warrants that all services performed under this Agreement will be performed consistent with generally prevailing professional or industry standards.
6. **Authority.** Contractor represents and agrees that this Agreement reflects Contractor’s full and correct name and that Contractor is entering into this Agreement in an individual capacity/with authorization on behalf of the named entity.
7. **Conflict of Interest.** Contractor represents, and agrees that Contractor presently has no interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with Contractor’s performance of the Services hereunder. Contractor further warrants that no relationship or affiliation exists between Contractor and City that could be construed as a conflict of interest with regard to this Agreement.
8. **Deliverables and use of Documents.** All drawings, specifications, plans, computations, data, photographs, records, models, statements, reports, and other deliverables or materials prepared or produced by Contractor in connection with the Services (collectively, “**Service Deliverables**”), whether or not accepted or rejected by City, are the property of City and for its exclusive use and re-use at any time without further compensation and without any restrictions. Contractor will not sell, disclose, or obtain any other compensation

for the Service Deliverables. Contractor will not use Service Deliverables in any manner for any other purpose without the express written consent of City.

9. Assignment. Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, without the express written consent of City. The benefits and burdens of this Agreement are assignable by City.

10. Order of Precedence. This Agreement includes by reference, the provisions of the solicitation documents, Contractor's response to the solicitation, the exhibits or attachments to this Agreement. In case of any conflict among the provisions of this Agreement, the following descending order of precedence will be observed:

- 10.1** This Agreement and Standard Terms and Conditions;
- 10.2** Exhibit A;
- 10.3** Solicitation Documents
- 10.4** Contractor's Response to Solicitation
- 10.5** Other exhibits and attachments to this Agreement

In the event of any conflict between the Agreement and the provisions of any exhibits or attachments to this Agreement, this Agreement will govern and control.

11. Additional Services/Change or Delay in Services. The City may direct the Contractor to perform services outside of the scope of the Services. The Contractor will submit a written estimate of fees to the City and obtain the City's authorization before initiating any additional services. Each material change (deletion or addition) in the services to be provided by Contractor must be authorized by the City on the Authorization of Change in Services, **Exhibit B** to this Agreement. Compensation for additional services will be in addition to that specified for the Services. The approval of the City Council is necessary for all additional services the compensation for which exceeds 50,000. No charge will be made by the Contractor for any hindrance or delay from any cause whatever during the progress of any portion of its work that can reasonably be contemplated by the scope of work, but the City may grant an extension of time for the completion of the work, provided it has satisfied that such delays or hindrances were due to extraordinary causes or to the acts of omission or commission by the City. Any such extension of time will be provided utilizing the City's Authorization of Change in Services form.

12. Force Majeure. Neither City nor Contractor will be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

13. Termination. City may terminate this Agreement in accordance with the Standard Terms and Conditions. Upon such termination, City will pay Contractor, at the rate set out in **Exhibit A**, for Services satisfactorily performed through the date of termination. Notwithstanding any provision in this Agreement to the contrary, City will not be required to pay or reimburse Contractor for any Services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.

14. Notice. Any notices required under this Agreement will be made in writing, postage prepaid to the following addresses, and will be deemed given up hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three days after deposit in the United States Mail:

CITY:

The City of San Marcos
Attn: City Manager's Office
630 East Hopkins Street
San Marcos, TX 78666

CONTRACTOR:

InfoSend, Inc.
Russ Rezai, President
4240 East La Palma Avenue
Anaheim, CA 92807

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the Effective Date written above:

CONTRACTOR:

Signature

Date

Print Full Name / Title (if not in individual capacity)

CITY:

Signature

Date

Bert Lumbreras

Print Name

City Manager

Title

EXHIBIT "A"
SCOPE OF WORK

EXHIBIT "B"
AUTHORIZATION OF CHANGE IN SERVICE

AGREEMENT/ SERVICES NAME:		
CITY REPRESENTATIVE:		
CONTRACTOR:		
CONTRACT EFFECTIVE DATE:		
THIS AUTHORIZATION DATE:		AUTHORIZATION NO.:

DESCRIPTION OF WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES:

Original Contract Amount:	NTE	\$
Previous Increases/Decreases in Contact Amount:	NTE	\$
This Increase/Decrease in Contract Amount:	NTE	\$
Revised Contract Amount:	NTE	\$

CONTRACTOR:

Signature

Date

Print Full Name / Title (if not in individual capacity)

CITY:

Signature

Date

Print Name

Title

City Department Use Only Below This Line (PM, etc.).

Account Number(s):		
#	{ Date }	{ Amount }
#	{ Date }	{ Amount }
#	{ Date }	{ Amount }