

AGREEMENT

THIS AGREEMENT is made and entered into on April 27, 2021, by and between the COUNTY OF FRESNO, a political subdivision of the State of California ("COUNTY"), and InfoSend, Inc., a California corporation, whose address is 4240 East La Palma Avenue, Anaheim, California 92807 ("CONTRACTOR").

Recitals

A. The office of the COUNTY Auditor-Controller/Treasurer-Tax Collector ("Tax Collector") is responsible for printing and mailing various statements and forms throughout the year.

B. The COUNTY wishes to engage the CONTRACTOR to provide printing and mail services for some of the various statements and forms that the Tax Collector is responsible for, according to the terms of this agreement.

C. The CONTRACTOR represents that it is ready, willing, and able to provide printing and mail services according to the terms of this agreement.

The parties therefore agree as follows:

1. OBLIGATIONS OF THE CONTRACTOR

A. CONTRACTOR shall receive Data from the Tax Collector, and use the Data to print, insert, presort, and mail Output on behalf of the Tax Collector and according to the Tax Collector's Instructions. "Data" means electronic files containing information necessary to generate Output. "Output" means statements, bills, and correspondence. "Instructions" means instructions and specifications for how the Data is required to be processed into Output.

B. CONTRACTOR shall provide the Tax Collector with appropriate credentials to access CONTRACTOR's Secured File Transfer Protocol (SFTP) server for the purpose of transferring Data to and from CONTRACTOR and the Tax Collector.

C. CONTRACTOR shall pre-process and reformat Data according to United States Postal Service barcode specifications and customize the Tax Collector's customer information according to Instructions.

1 D. Output must be all of the following:

- 2 • Legible, complete and formatted in a form, layout, and design as prescribed by the Tax
- 3 Collector according to the Instructions.
- 4 • Printed on appropriate paper stock according to Instructions.
- 5 • Once completed, electronically sorted according by weight and ZIP to qualify for lowest
- 6 possible United States Postal Service rate.

7 E. If the Data does not contain a mailing address for any piece of Output, the

8 CONTRACTOR shall return that Output to the Tax Collector immediately, unless the Instructions

9 expressly provide otherwise.

10 F. CONTRACTOR shall supply envelopes for mailing Output, which

11 envelopes must be sized appropriately to the relevant Output, and shall include pre-addressed

12 return envelopes when necessary.

13 G. CONTRACTOR shall fold, insert, meter, and mail completed Output in

14 windowed envelopes, along with inserts such as return payment envelopes and informational

15 pieces.

16 H. CONTRACTOR shall ensure the correct number of items and inserts are

17 in each envelope.

18 .

19 I. CONTRACTOR shall complete mailing services and postmark

20 correspondence within five business days after receiving Data and Instructions, or on a

21 predetermined date if one is designated by the Tax Collector in the Instructions.

22 J. CONTRACTOR shall return directly to the Tax Collector any Output that

23 is subject to a mail hold that was requested by the recipient prior to the Output being mailed, any

24 Output unable to be mailed due to incomplete or incorrect address information provided by the

25 Tax Collector, and all Output returned by the United States Postal Service for any other reason.

26 K. CONTRACTOR shall destroy Data and any materials generated by

27 CONTRACTOR for the Tax Collector, such as blank pre-printed stock, within 30 days after the

28 final use of Data by CONTRACTOR, unless otherwise directed by the Tax Collector.

1 L. CONTRACTOR shall not sell or otherwise distribute Data or Output
2 except as expressly provided by this agreement.

3 M. CONTRACTOR is solely responsible to supply all labor, materials, and
4 equipment necessary to provide the services under this agreement.

5 N. CONTRACTOR shall comply with all local, state, and federal laws and
6 regulations applicable to the provision of services under this agreement.

7 2. OBLIGATIONS OF THE COUNTY

8 A. The Tax Collector will provide Data to CONTRACTOR, subject to the terms
9 of this agreement.

10 B. The Tax Collector will provide Instructions to CONTRACTOR, explaining
11 how Data will be used.

12 C. The Tax Collector must deliver Data and Instructions by electronic
13 transmission via Secured File Transfer Protocol (SFTP) to CONTRACTOR's server, or alternative
14 method to CONTRACTOR at its facility, or such other delivery location agreed upon in advance by
15 the Tax Collector and the CONTRACTOR in writing.

16 D. COUNTY will obtain, maintain, and operate at its own expense, all
17 necessary devices, software, and services, including, but not limited to hardware, software,
18 installation, and maintenance of voice or data lines, required for the electronic transmission of
19 Data and, if applicable, the electronic reception of invoices, digital copies of Output, test and
20 sample forms, and other communication.

21 E. The Tax Collector may transmit Data in the form of pre-formatted plain text
22 files, Portable Document Format (PDF), fixed width, or comma delimited format.

23 F. The Tax Collector is solely responsible for the correctness of Data, related
24 tabular codes, text, dates, fees and charges or mailings to the Tax Collector's customers and all
25 other information in the Data.

26 G. Data remains the sole property of the COUNTY.

27 3. TERM

28 This agreement is effective as of April 27, 2021, and terminates on April 26,

2024. This agreement may be extended for two additional consecutive one-year periods upon written approval of both parties at least 30 days before the first day of the next one-year extension period. The Tax Collector or his or her designee is authorized to sign the written approval on behalf of the COUNTY based on the CONTRACTOR's satisfactory performance. The extension of this agreement by the COUNTY is not a waiver or compromise of any default or breach of this agreement by the CONTRACTOR existing at the time of the extension whether or not known to the COUNTY.

4. TERMINATION

1. Non-Allocation of Funds - The provisions of this agreement are contingent on the approval of funds by the appropriating government agency. If sufficient funds are not allocated, then the COUNTY, upon at least 30 days' advance written notice to the CONTRACTOR, may: (A) Modify the services provided by the CONTRACTOR under this agreement; or (B) Terminate this agreement.

2. Breach of Contract - The COUNTY may immediately suspend or terminate this agreement in whole or in part, where in the sole determination of the COUNTY the CONTRACTOR has:

- 1) Obtained or used funds illegally or improperly;
- 2) Failed to comply with any part of this agreement;
- 3) Submitted a substantially incorrect or incomplete report to the COUNTY;
- 4) Improperly performed any of its obligations under this agreement.

In no event does any payment by the COUNTY constitute a waiver by the COUNTY of any breach of this agreement or any default which may then exist on the part of the CONTRACTOR. Neither does such payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default. The COUNTY may demand of the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were not expended in accordance with the terms of this agreement. The CONTRACTOR shall promptly refund any such funds upon demand.

3. Without Cause - Under circumstances other than those set forth above, COUNTY may terminate this agreement by giving at least 30 days' advance written notice to CONTRACTOR.

5. COMPENSATION/INVOICING:

A. COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive compensation for the services performed and forms created under this agreement as follows:

1) Services

- \$0.005 per image of data processing
- \$0.07 per image of laser printing 8 ½ x 11 inches (black)
- \$0.073 per image of laser printing 11 ½ x 14 inches (black)
- \$0.08 per image of laser printing 8 ½ x 11 inches (color)
- \$0.083 per image of laser printing 11 ½ x 14 inches (color)
- \$0.00 per piece for inserting and metering
- \$0.0075 per piece for additional insert
- \$0.30 per piece that involves hand work
- \$95.00 per hour for graphic design
- \$125.00 per hour of programming
- The current AADC Letter postage rate and 3 Digit Flat postage rate calculated at the time of mailing

“AADC” means a presort level in which all pieces in the bundle or container are addressed for delivery in the service area of the same automated area distribution center.

2) Forms

- \$0.073 per form measuring up to 8 ½ x 14 inches
- \$0.07 per form measuring up to 8 ½ x 11 inches
- \$0.215 per booklet pistol poly window 6 x 9 ½ inches
- \$0.319 per booklet pistol poly window 9 x 12 inches
- \$0.015 per #9 standard single window return envelope

- \$0.018 per custom #9 return envelope
- \$0.017 per #10 windowed envelope

B. CONTRACTOR shall submit monthly invoices for services performed and forms created the preceding month, to the Tax Collector. The invoices will include a breakdown of all charges in detail per job.

C. In no event shall the compensation payable under this agreement exceed four hundred thousand dollars (\$400,000) for the first year or three hundred fifty thousand dollars (\$350,000) for each one year period that this agreement is in effect after that first year. If this agreement is extended for both periods provided in Section 3, the maximum amount payable to CONTRACTOR shall not exceed one million eight hundred thousand (\$1,800,000) during the term of this agreement. All of CONTRACTOR's expenses incidental to its performance of services under this agreement shall be borne solely by CONTRACTOR.

6. INDEPENDENT CONTRACTOR:

A. In performance of the work, duties and obligations assumed by CONTRACTOR under this agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer this agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

B. CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject of those laws.

C. Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right to employment rights and benefits available to COUNTY employees.

1 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its
2 employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely
3 responsible and save COUNTY harmless from all matters relating to payment of
4 CONTRACTOR'S employees, including compliance with Social Security withholding and all other
5 regulations governing such matters. It is acknowledged that during the term of this agreement,
6 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this
7 agreement.

8 7. MODIFICATION: This agreement may not be modified except by written
9 agreement of both parties.

10 8. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this
11 agreement nor their rights or duties under this agreement without the prior written consent of the
12 other party.

13 9. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold harmless,
14 and at COUNTY's request, defend the COUNTY, its officers, agents, and employees from any
15 and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to
16 COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its
17 officers, agents, or employees under this agreement, and from any and all costs and expenses,
18 damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation
19 who may be injured or damaged by the performance, or failure to perform, of CONTRACTOR,
20 its officers, agents, or employees under this agreement.

21 10. INSURANCE

22 Without limiting the COUNTY's right to obtain indemnification from
23 CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full
24 force and effect, the following insurance policies throughout the term of this agreement:

25 A. Commercial General Liability

26 Commercial General Liability Insurance with limits of not less than Two
27 Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars
28 (\$4,000,000). This policy shall be issued on a per occurrence basis. COUNTY may require

specific coverages including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed necessary because of the nature of this contract.

B. Automobile Liability

Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage must include any auto used in connection with this agreement.

C. Worker's Compensation

Worker's Compensation insurance as required by the California Labor Code.

Additional Requirements Relating to Insurance

CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance naming the County of Fresno, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this agreement are concerned. Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance provided under CONTRACTOR's policies herein. This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance written notice given to COUNTY.

CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents, and employees any amounts paid by the policy of worker's compensation insurance required by this Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may be necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation under this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

Within Thirty (30) days from the date CONTRACTOR signs and executes this agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as required herein, to the County of Fresno, Risk

1 Management, 2220 Tulare St, Fresno, CA 93721 stating that such insurance coverage have been
2 obtained and are in full force; that the County of Fresno, its officers, agents and employees will not
3 be responsible for any premiums on the policies; that for such worker's compensation insurance
4 the CONTRACTOR has waived its right to recover from the COUNTY, its officers, agents, and
5 employees any amounts paid under the insurance policy and that waiver does not invalidate the
6 insurance policy; that such Commercial General Liability insurance names the County of Fresno,
7 its officers, agents and employees, individually and collectively, as additional insured, but only
8 insofar as the operations under this agreement are concerned; that such coverage for additional
9 insured shall apply as primary insurance and any other insurance, or self-insurance, maintained
10 by COUNTY, its officers, agents and employees, shall be excess only and not contributing with
11 insurance provided under CONTRACTOR's policies herein; and that this insurance shall not be
12 cancelled or changed without a minimum of thirty (30) days advance, written notice given to
13 COUNTY.

14 In the event CONTRACTOR fails to keep in effect at all times insurance
15 coverage as herein provided, the COUNTY may, in addition to other remedies it may have,
16 suspend or terminate this agreement upon the occurrence of such event.

17 All policies shall be issued by admitted insurers licensed to do business in the
18 State of California, and such insurance shall be purchased from companies possessing a current
19 A.M. Best, Inc. rating of A FSC VII or better.

20 11. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during
21 business hours, and as often as the COUNTY may deem necessary, make available to the
22 COUNTY for examination all of its records and data with respect to the matters covered by this
23 agreement. The CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to
24 audit and inspect all of such records and data necessary to ensure CONTRACTOR's compliance
25 with the terms of this agreement.

26 If this agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR
27 shall be subject to the examination and audit of the Auditor General for a period of three (3) years
28 after final payment under contract (Government Code Section 8546.7).

1 12. NOTICES: The persons and their addresses having authority to give and
2 receive notices under this Agreement include the following:

<u>COUNTY</u>	<u>CONTRACTOR</u>
COUNTY OF FRESNO	InfoSend Inc.
Auditor-Controller/Treasurer-Tax Collector	
PO Box 1192	4240 E La Palma Avenue,
Fresno, CA 93715-1192	Anaheim, CA 92807

7 All notices between the COUNTY and the CONTRACTOR provided for or
8 permitted under this Agreement must be in writing and delivered either by personal service, by
9 first-class United States mail, by an overnight commercial courier service, or by telephonic
10 facsimile transmission. A notice delivered by personal service is effective upon service to the
11 recipient. A notice delivered by first-class United States mail is effective three COUNTY business
12 days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice
13 delivered by an overnight commercial courier service is effective one COUNTY business day after
14 deposit with the overnight commercial courier service, delivery fees prepaid, with delivery
15 instructions given for next day delivery, addressed to the recipient. A notice delivered by
16 telephonic facsimile is effective when transmission to the recipient is completed (but, if such
17 transmission is completed outside of COUNTY business hours, then such delivery shall be
18 deemed to be effective at the next beginning of a COUNTY business day), provided that the
19 sender maintains a machine record of the completed transmission. For all claims arising out of or
20 related to this Agreement, nothing in this section establishes, waives, or modifies any claims
21 presentation requirements or procedures provided by law, including but not limited to the
22 Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section
23 810).

24 13. VENUE AND GOVERNING LAW: Venue for any action arising out of or related
25 to this agreement shall only be in Fresno County, California.

26 The rights and obligations of the parties and all interpretation and performance
27 of this agreement shall be governed in all respects by the laws of the State of California.

28 14. DISCLOSURE OF SELF-DEALING TRANSACTIONS: This provision is only

1 applicable if the CONTRACTOR is operating as a corporation (a for-profit or non-profit
2 corporation) or if during the term of this agreement, the CONTRACTOR changes its status to
3 operate as a corporation.

4 Members of the CONTRACTOR's Board of Directors shall disclose any self-
5 dealing transactions that they are a party to while CONTRACTOR is providing goods or
6 performing services under this agreement. A self-dealing transaction shall mean a transaction to
7 which the CONTRACTOR is a party and in which one or more of its directors has a material
8 financial interest. Members of the Board of Directors shall disclose any self-dealing transactions
9 that they are a party to by completing and signing a Self-Dealing Transaction Disclosure Form
10 (Exhibit A) and submitting it to the COUNTY prior to commencing with the self-dealing transaction
11 or immediately thereafter.

12 ENTIRE AGREEMENT: This agreement constitutes the entire agreement between
13 the CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all
14 previous agreement negotiations, proposals, commitments, writings, advertisements, publications,
15 and understanding of any nature whatsoever unless expressly included in this agreement.

16 [SIGNATURE PAGE FOLLOWS]

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

3
4 **CONTRACTOR**

5 Roxana Weil

6 (Authorized Signature)

7 Roxana Weil, EVP

8 Print Name & Title

9 4240 E. La Palma Ave.

10 Anaheim, CA 92807

11 Mailing Address

12
13 **COUNTY OF FRESNO**

14 Steve Brandau
15 Steve Brandau, Chairman of the Board of
16 Supervisors of the County of Fresno

17 **ATTEST:**

18 Bernice E. Seidel
19 Clerk of the Board of Supervisors
20 County of Fresno, State of California

21
22 By: Jose Curb

23 Deputy

24 **FOR ACCOUNTING USE ONLY:**

25 ORG No.: 04100500

26 Account No.: 7268/7295

27 Requisition No.:
28

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit A

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	