

ORIGINAL

**AMENDED AND RESTATED AGREEMENT FOR THE
PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SAN DIEGO
AND
NETFILE, INC.**

The City of San Diego, a municipal corporation with its principal place of business located at 202 C Street, San Diego, California, 92101 (City or Party), and NetFile, Inc., a California corporation, with its principal place of business located at 2707 Aurora Road, Mariposa, California, 95338 (NetFile, Contractor, or Party), collectively referred to as the Parties, enter into this Amended and Restated Agreement, in accordance with the following facts:

RECITALS

A. By agreement, approved in accordance with San Diego Municipal Code sections 22.3203(b) and 22.3208(d), and effective September 30, 2019, the Contractor agreed to provide certain professional and technical services related to the electronic filing of disclosure documents required by the California Political Reform Act and the City of San Diego Ethics Ordinance, and the City agreed to compensate the Contractor for those services under an agreed-upon compensation schedule and terms (2019 Agreement). The Parties intend to amend and restate the 2019 Agreement by this Agreement, which includes modified terms intended to take effect October 1, 2020 (Amended and Restated Agreement).

B. By agreement, approved in accordance with San Diego Municipal Code sections 22.3203(b) and 22.3208(d), and effective October 6, 2016, the City contracted with the Contractor for professional and technical services, similar to the services described in paragraph A above, and those services were provided by the Contractor until September 29, 2019 (2016 Agreement).

C. San Diego Municipal Code section 22.3016 allows for the award of a City contract without a competitive process when a determination is made that a competitive process would be unavailing or would not produce an advantage, and soliciting bids or proposals would therefore be undesirable, impractical, or impossible.

D. The 2016 Agreement and the 2019 Agreement were both approved as sole source contracts, upon certification of the City's Purchasing Agent, in accordance with San Diego Municipal Code section 22.3016, who determined that the award of the 2016 Agreement and the 2019 Agreement were necessary because strict compliance with the City's competitive bidding process would be unavailing or would not produce an advantage, and soliciting bids or proposals would therefore be undesirable, impractical, or impossible. The Contractor is providing the City with software and maintenance support that permits the City and its authorized users to electronically file and review Fair Political Practices Commission (FPPC) campaign disclosures, Statements of Economic Interest (Form 700), lobbyist disclosures, and related documents. Through market research, it was determined that there is no other software or services available to the City, other than the Contractor's software and services, that satisfies all disclosure

requirements, specifically campaign, lobbyist, and Form 700, in an automated way unless a new system is developed. The City is presently reviewing how best to provide these services in the future but needs to amend and restate the 2019 Agreement to provide its constituents with uninterrupted services to comply with state and local requirements related to campaign, lobbying, and conflict-of-interest disclosures.

E. In March 2020, the Governor of the State of California and the City's Mayor declared a statewide and local public health emergency as a result of a novel coronavirus, causing a lethal disease called COVID-19. California's Governor ordered residents to stay at home and closed non-essential businesses, as a means to curtail the spread of COVID-19, which has caused a worldwide pandemic. As a result of the public health orders, many City functions and activities have been delayed or curtailed, including timely competitive bidding processes, as City employees, who are essential, state disaster service workers, have taken on additional and new duties to respond to the public health emergency caused by COVID-19.

F. The City has an immediate need to continue its contractual relationship with the Contractor, to ensure the City's constituents have uninterrupted access to electronic filing and review of disclosure documents required by the California Political Reform Act and the City of San Diego Ethics Ordinance, and the Contractor is able to provide the services, but under modified terms and conditions as specified in this Amended and Restated Agreement, which is intended to supersede the 2016 Agreement and the 2019 Agreement.

G. The Contractor represents that it, and its sub-contractors, if any, have the professional qualifications, expertise, desire and any licenses necessary to provide the specified goods and required services of the quality and type which meet the City's requirements.

H. The Parties have specified the terms and conditions under which such services will be provided and paid for, and this Amended and Restated Agreement is intended to set forth the full and complete agreement of the Parties related to the subject of the agreement.

I. San Diego Charter (Charter) section 99 provides, in pertinent part, that: "[n]o contract, agreement or obligation extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds' majority vote of the members elected to the Council."

J. The Parties acknowledge that this Amended and Restated Agreement must be approved by the City Council, by ordinance, in accordance with Charter section 99, to take effect.

K. The Recitals to this Amended and Restated Agreement are incorporated into and constitute a part of the Amended and Restated Agreement.

In accordance with the facts recited here and for good and valuable consideration the recipient and sufficiency of which are acknowledged, the City and the Contractor agree as follows:

AGREEMENT

1. SERVICES TO BE PROVIDED

The City will employ the Contractor to provide the services (Services), as more fully described in Exhibit A entitled, "SCOPE OF SERVICES," attached and incorporated by this reference.

Except as otherwise specified in this Agreement, the Contractor, at its own risk and expense, must furnish all necessary technical and professional services, including labor, material, equipment, transportation, supervision, and expertise to satisfactorily complete the work required by the City.

2. EFFECTIVE DATE AND TERM OF AGREEMENT

2.1 Effective Date. This Amended and Restated Agreement is effective on the last date that the Amended and Restated Agreement is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Amended and Restated Agreement is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. The term cannot exceed five years unless approved by the City Council by ordinance.

2.2 Term. The Contractor must provide the Services, in accordance with the agreed-upon Schedule of Fees, set forth in Exhibit B, from September 30, 2019 through April 30, 2021.

2.3 Extension. The City may, in its sole discretion, upon City Council approval of funding and upon a 30-day advance written notice to the Contractor, extend this Amended and Restated Agreement, on the same terms and conditions, until September 30, 2021, or later date if the later date is mutually agreed-upon by both Parties. Any extension of this Amended and Restated Agreement must be authorized by the Purchasing Agent, Mayor, or City Council, as legally required, and in accordance with Charter section 99 and other applicable law. The Contractor must not increase its pricing in excess of the percentage increase described in the Amended and Restated Agreement.

3. COMPENSATION AND PAYMENT

3.1 In consideration for the Contractor's complete performance of Services, the City will pay the Contractor for all materials provided and services rendered by the Contractor at the rates for labor and cost per unit for materials as set forth here and in Exhibit B, entitled "SCHEDULE OF FEES," attached and incorporated by this reference. The total amount of fees that the City is obligated to pay under this Amended and Restated Agreement must not exceed \$75,000 for the period from September 30, 2019 through September 30, 2020, and \$81,250 for the period from October 1, 2020 through April 30, 2021, unless an increase in this amount is approved by the City's Purchasing Agent, Mayor, or City Council, as legally required.

3.2 From September 30, 2019 through September 30, 2020, the Contractor must bill the City on a quarterly basis for Services to be provided by the Contractor during the subsequent quarter, which will be verified by the City. The City will pay the Contractor within 30 days of the City's receipt of an invoice.

3.3 From October 1, 2020 through April 30, 2021, the Contractor must bill the City on a quarterly basis for Services provided for the upcoming quarter. The City will pay the Contractor within 30 days of the City's receipt of an invoice.

4. NO ASSIGNMENT OF AGREEMENT

The City and the Contractor bind themselves, their successors, and assigns to all covenants of this Amended and Restated Agreement. The Contractor must not assign or transfer this Amended and Restated Agreement without the prior written approval of the City.

5. NO THIRD-PARTY BENEFICIARY

This Agreement must not be construed to be for the benefit of any third party or parties, and no third party or parties has any claim or right of action under this Amended and Restated Agreement.

6. INDEPENDENT CONTRACTOR

The Contractor and all persons employed by or contracted with the Contractor to furnish labor or materials under this Amended and Restated Agreement are independent contractors and do not act as agents, servants, or employees of the City. The Contractor has full rights to manage its employees in their performance of Services under this Amended and Restated Agreement. The Contractor is not authorized to bind the City to any contracts or other obligations.

7. SUBCONTRACTING

None of the Services under this Amended and Restated Agreement may be performed by subcontractors unless the Contractor specifically identifies subcontractors in writing and the City pre-approves such subcontractors in writing. The Contractor is fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as the Contractor is for the acts and omissions of persons directly employed by it.

8. USE OF CITY NAME OR EMBLEM

The Contractor and its employees, agents, and representatives must not, without the prior written consent of City in each instance, use in advertising, publicity or otherwise the name of the City or any affiliate of the City, or any officer or employee of the City, nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, agreement or simulation thereof owned by the City or its affiliates, nor represent, directly or indirectly, that any product or service provided by the Contractor has been approved or endorsed by the City, nor refer to the existence of this Amended and Restated Agreement in press releases, advertising or materials distributed to prospective customers. Notwithstanding the foregoing, the Contractor may acknowledge, when asked, that the City is a NetFile client.

9. QUALIFICATIONS OF CONTRACTOR

The Contractor represents that its personnel are qualified to furnish the Services of the type and quality which the City requires. The City expressly relies on the Contractor's representations regarding its skills and knowledge. The Contractor must promptly perform all Services requested by the City in a safe manner and in accordance with all federal, state, and local operation and safety

regulations. The Contractor must work closely with and be guided by the City. The Contractor must also perform all work in accordance with generally accepted business practices and performance standards of the industry.

10. MONITORING OF SERVICES

The City may monitor the Services performed under this Amended and Restated Agreement to determine whether the Contractor's operation conforms to City policy and to the terms of this Amended and Restated Agreement. The City may also monitor the Services to be performed to determine whether financial operations are conducted in accordance with applicable City, county, state, and federal requirements. If any action of the Contractor constitutes a breach, the City may terminate this Agreement pursuant to the provisions described herein.

11. WARRANTY

11.1 The Contractor expressly warrants that all materials and services covered by this Amended and Restated Agreement are fit for the purpose intended, free from known defects, provided in a timely manner, and conform to the specifications, requirements, and instructions upon which this Amended and Restated Agreement is based. The Contractor agrees to promptly replace or correct any incomplete, inaccurate, or defective Services at no further cost to the City when defects are due to the negligence, errors, or omissions of the Contractor.

11.2 The Contractor further warrants and represents that it is the owner of or has acquired the rights to use (including derivative rights) the software, technology, or otherwise that is required, in order to provide all related materials and services as set forth in Exhibit A, without violating any rights of a third party, and there is currently no actual or threatened suit by any such third party based on an alleged violation of such third-party rights by the Contractor.

11.3 The Contractor further warrants that NetFile servers have a guaranteed uptime of 99% and, for so long as the City pays the fees described in this Amended and Restated Agreement (a) the system will be materially free of errors, and (b) the Contractor will provide the Services in a professional and workmanlike manner consistent with the highest industry standards. The Contractor further warrants, during the term of this Amended and Restated Agreement, that (i) the NetFile servers will be free of any Harmful Code (as defined below), and (ii) the Contractor will not interfere with or disrupt the City's or the user's use of the system.

11.4 For purposes of this Amended and Restated Agreement, the term "Harmful Code" means any software code with the ability to damage, interfere with, or adversely affect, computer programs, data files, or hardware without the consent or intent of the computer user. This definition includes, without limitation, self-replacing and self-propagating programming

instructions commonly called “viruses,” “Trojan horses,” and “worms.” The Contractor agrees to implement reasonable procedures to prevent any software, link, or code provided to the City from being contaminated with Harmful Code. If the Contractor learns of or suspects the existence of any Harmful Code, the Contractor must immediately notify the City and make every effort to remove the Harmful Code.

12. CITY’S MANDATORY PROVISIONS

12.1 Contractor Certification of Compliance. By signing this Amended and Restated Agreement, the Contractor certifies that the Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Amended and Restated Agreement.

12.1.1 Drug-Free Workplace Certification. The Contractor must comply with the City’s Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Amended and Restated Agreement by this reference.

12.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations. The Contractor must comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, the Contractor must comply with the most restrictive requirement (i.e., that which provides the most access). The Contractor also must comply with the City’s ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Amended and Restated Agreement by reference. The Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this Amended and Restated Agreement contains language which indicates the subcontractor’s agreement to abide by the provisions of the City’s Council Policy and any applicable access laws and regulations.

12.1.3 Non-Discrimination Requirements.

12.1.3.1 Compliance with City’s Equal Opportunity Contracting Program (EOCP). The Contractor must comply with City’s EOCP Requirements. The Contractor must not discriminate against any employee or applicant for employment on any basis prohibited by law. The Contractor must provide equal opportunity in all employment practices. Prime Contractors must ensure that their subcontractors comply with this program. Nothing in this Section must be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

12.1.3.2 Non-Discrimination Ordinance. The Contractor must not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. The Contractor must provide equal opportunity for subcontractors to participate in subcontracting opportunities. The Contractor understands and agrees that violation of this clause will be considered a material breach of the Amended and Restated Agreement and may result in termination, debarment, or other sanctions. The Contractor must ensure that this language is included in contracts between the Contractor and any subcontractors, vendors and suppliers.

12.1.3.3 Compliance Investigations. Upon the City's request, the Contractor agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Contractor for each subcontract or supply contract. The Contractor further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause will be considered a material breach of the Amended and Restated Agreement and may result in termination, debarment, and other sanctions.

12.1.4 Equal Benefits Ordinance Certification. Unless an exception applies, the Contractor must comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Amended and Restated Agreement.

12.1.5 Contractor Standards. The Contractor must comply with the Contractor Standards provisions codified in the SDMC. The Contractor understands and agrees that violation of the Contractor Standards may be considered a material breach of the Contract and may result in termination, debarment, and other sanctions.

12.1.6 Noise Abatement. The Contractor must operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

12.1.7 Storm Water Pollution Prevention Program. The Contractor must comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

The Contractor must comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

The Contractor must comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

12.1.8 Service Worker Retention Ordinance. If applicable, the Contractor must comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

12.1.9 Product Endorsement. The Contractor must comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

12.1.10 Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before the Amended and Restated Agreement is executed.

12.1.11 Equal Pay Ordinance. Unless an exception applies, the Contractor must comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. The Contractor must certify in writing that it will comply with the requirements of the EPO.

12.1.11.1 Contractor and Subcontract Requirement. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a contractor to the same extent as it would apply to that contractor. Any contractor subject to the Equal Pay Ordinance must require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

13. CONFLICT OF INTEREST AND VIOLATIONS OF LAW

13.1 Conflict of Interest Laws. The Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, et. seq. and 81000, et. seq., and the Ethics Ordinance, codified in the SDMC. The City may determine that the Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon the City's request, the Contractor must submit the necessary documents to City.

13.2 Contractor's Responsibility for Employees and Agents. The Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

13.3 Contractor's Financial or Organizational Interests. In connection with any task, the Contractor must not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

13.4 Certification of Non-Collusion. The Contractor certifies that: (1) the Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) the Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) the Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) the Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

13.5 Hiring City Employees. This Amended and Restated Agreement will be unilaterally and immediately terminated by the City if the Contractor employs an individual who within the 12 months immediately preceding such employment did in his or her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of the Contractor.

14. ADDITIONAL CONTRACTOR OBLIGATIONS

14.1 Inspection and Acceptance. The City will inspect and accept goods provided under this Amended and Restated Agreement at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

14.2 Responsibility for Lost or Damaged Shipments. The Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by the City. The City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at the Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

14.3 Responsibility for Damages. The Contractor is responsible for all damage that occurs as a result of the Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Amended and Restated Agreement. The Contractor must immediately report any such damage to people or property to the Administrator of this Amended and Restated Agreement.

14.4 Delivery. Delivery must be made on the delivery day specified in the Amended and Restated Agreement. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

14.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Amended and Restated Agreement. The Contractor must immediately notify the City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. The City may terminate this Amended and Restated Agreement as provided herein if City, in its sole discretion, determines the delay is material.

14.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, the City may allow the Contractor to a reasonable extension of time to complete performance, but the Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by the City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between the City and the Contractor. This provision does not apply to a delay caused by the Contractor's acts or omissions. The Contractor is not entitled to an

extension of time to perform if a delay is caused by the Contractor's inability to obtain materials, equipment, or labor unless the City has received, in a timely manner, documentary proof satisfactory to the City of the Contractor's inability to obtain materials, equipment, or labor, in which case the City's approval must be in writing.

14.6 Restrictions and Regulations Requiring Modification. The Contractor must immediately notify the City in writing of any regulations or restrictions that may or will require the Contractor to alter the material, quality, workmanship, or performance of the goods or services to be provided. The City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Amended and Restated Agreement at no expense to the City.

14.7 Industry Standards. The Contractor must provide goods and services acceptable to the City in strict conformance with the Amended and Restated Agreement. The Contractor must also provide goods and services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and services called for under this Amended and Restated Agreement using the degree of care and skill ordinarily exercised by reputable providers of such goods and services. Where approval by the City, the Mayor, or other representative of the City is required, it is understood to be general approval only and does not relieve the Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

14.8 Records Retention and Examination. The Contractor must retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Amended and Restated Agreement for five years after receipt of final payment by the City under this Amended and Restated Agreement. The Contractor must make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. The Contractor must make available all requested data and records at reasonable locations within the City or County of San Diego at any time during normal business hours, and as often as the City deems necessary. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Amended and Restated Agreement. The Contractor must include this provision in all subcontracts made in connection with this Amended and Restated Agreement.

14.8.1 The Contractor must maintain records of all subcontracts entered into with all firms, all project invoices received from the Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records must show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

14.9 Quality Assurance Meetings. Upon the City's request, the Contractor must schedule one or more quality assurance meetings with the City's Contract Administrator to discuss the Contractor's performance. If requested, the Contractor must schedule the first quality assurance meeting no later than eight weeks from the date of commencement of work under the Amended and Restated Agreement. At the quality assurance meeting(s), the City's Administrator

will provide the Contractor with feedback, will note any deficiencies in Contractor performance, and provide the Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by the City will depend upon the Contractor's performance.

14.10 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review the Contractor's records to confirm contract compliance. The Contractor must make reasonable efforts to cooperate with the Auditor's requests.

14.11 Safety Data Sheets. If specified by the City in the solicitation or otherwise required by this Amended and Restated Agreement, the Contractor must send with each shipment one copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Amended and Restated Agreement for violation of safety procedures.

14.12 Project Personnel. Except as formally approved by the City, the key personnel identified in the Contractor's bid or proposal must be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

14.12.1 Criminal Background Certification. The Contractor certifies that all employees working on this Amended and Restated Agreement have had a criminal background check and that said employees are clear of any sexual and drug related convictions. The Contractor further certifies that all employees hired by the Contractor or a subcontractor must be free from any felony convictions.

14.12.2 Photo Identification Badge. The Contractor must provide a company photo identification badge to any individual assigned by the Contractor or subcontractor to perform services or deliver goods on City premises. The badge must be worn at all times while on City premises. The City reserves the right to require the Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees must turn in their photo identification badges to the Contractor upon completion of services and prior to final payment of invoice.

14.13 Standards of Conduct. The Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

14.13.1 Supervision. The Contractor must provide adequate and competent supervision at all times during the term of this Amended and Restated Agreement. The Contractor must be readily available to meet with the City. The Contractor must provide the telephone numbers where its representative(s) can be reached.

14.13.2 City Premises. The Contractor's employees and agents must comply with all City rules and regulations while on the City premises.

14.13.3 Removal of Employees. The City may request the Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. The Contractor must comply with all such requests.

14.14 Licenses and Permits. The Contractor must, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contractor performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

14.15 Contractor and Subcontractor Registration Requirements. The Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not approve the Amended and Restated Agreement until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to terminated this Amended and Restated Agreement.

15. CONTRACTOR'S DUTY TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY

15.1 Contractor Duty. Subject to the limitations set forth in paragraph 16.2 below, and to the fullest extent permitted by law, the Contractor must defend (with legal counsel reasonably acceptable to the City), indemnify, protect, and hold harmless the City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Amended and Restated Agreement by the Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. The Contractor's duty to defend, indemnify, protect and hold harmless does not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

15.2 Limitation of Liability. The maximum liability to the City by NetFile and its licensors, if any, under this agreement, or arising out of any claim by the City related to NetFile's services, products, equipment or software for direct damages, whether in contract, tort or otherwise, is limited to the total amount of fees received during the last six months by NetFile from the City hereunder up to the time the cause of action giving rise to such liability occurred. In no event will NetFile or its licensors be liable to the City for any indirect, incidental, consequential, or special damages related to the use of NetFile's services, products, equipment or software or NetFile's failure to perform its obligations under this agreement, even if advised of the possibility of such damages, regardless of whether NetFile or its licensors are negligent. Provided, however, that for any peril or exposure insured against under the insurance required pursuant to Exhibit C, the limits of liability to City by NetFile will not be less than the amount of applicable, valid, and collectible insurance set forth in Exhibit C.

15.3 Liability for City Scanned Documents. The City accepts any and all liability resulting from the placement of documents scanned by the City that are made available on the Internet for public viewing through the services of the Contractor. In no event does the Contractor accept liability created by any document scanned into the system by the City.

16. INSURANCE REQUIREMENTS

During the term of this Amended and Restated Agreement, and for any time period set forth in Exhibit C, the Contractor must purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the Performance of Services under this Amended and Restated Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C attached and incorporated by this reference.

17. AMENDMENTS

This Amended and Restated Agreement may be amended only with the written consent of both Parties.

18. INTEGRATED DOCUMENT

This Amended and Restated Agreement represents the entire agreement between the City and the Contractor. No other understanding, agreements, conversations, or otherwise, with any representative of the City prior to execution of this Agreement affect or modify any of the terms or obligations of this Amended and Restated Agreement. Any verbal agreement is considered unofficial information and is not binding upon City.

19. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Amended and Restated Agreement is, for any reason, held invalid, illegal, or unenforceable in any respect, it will not affect the validity of the other provisions, which will remain in full force and effect.

20. DRAFTING AMBIGUITIES

The Parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Amended and Restated Agreement, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each Party. This Amended and Restated Agreement is not to be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Contract.

21. AMENDMENTS

Neither this Amended and Restated Agreement nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of the City and the Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all amendments.

22. CONFLICTS BETWEEN TERMS

If this Amended and Restated Agreement conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order will control. Varying degrees of stringency among the main body of this Amended and Restated Agreement, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement will control. Each Party must notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Amended and Restated Agreement.

23. LAW GOVERNING AMENDED AND RESTATED AGREEMENT

This Amended and Restated Agreement is governed and interpreted in accordance with the laws of the State of California.

24. DISPUTE RESOLUTION

24.1 If a dispute arises out of or relates to this Amended and Restated Agreement and cannot be settled through normal contract negotiations, the Contractor and the City must use mandatory non-binding mediation before having recourse in a court of law.

24.2 Selection of Mediator. A single mediator that is acceptable to both parties must be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Amended and Restated Agreement, if possible.

24.3 Expenses. The expenses of witnesses for either Party must be paid by the Party producing the witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, must be borne equally by the Parties, unless they agree otherwise.

24.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the Parties in writing. The Parties may agree to exchange any information they deem necessary. Both Parties must have a representative attend the mediation who is authorized to settle the dispute, though the City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either Party may have attorneys, witnesses or experts present.

24.5 Mediation Results. Any agreements resulting from mediation must be memorialized in writing. The results of the mediation will not be final or binding unless otherwise agreed to in writing by the Parties. Mediators are not subject to any subpoena or liability, and their actions are not be subject to discovery.

25. MANDATORY ASSISTANCE

25.1. Mandatory Assistance. If a third-party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under this Amended and Restated Agreement, the Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon the City's request. The Contractor's assistance includes, without limitation, providing professional consultations, attending mediations, arbitrations, depositions, trials, or any event related to the dispute resolution or litigation.

25.2 Compensation for Mandatory Assistance. The City will compensate the Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third-party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Contractor, its agents, officers, and employees, the Contractor must reimburse the City for all fees paid to the Contractor, its agents, officers, and employees for Mandatory Assistance.

25.3 Attorneys' Fees Related to Mandatory Assistance. In providing the City with dispute or litigation assistance, the Contractor or its agents, officers, and employees may incur expenses or costs, or both. The Contractor agrees that any attorney fees it may incur as a result of assistance provided under this section are not reimbursable.

26. VENUE

The venue of any suit filed by either Party is vested in the state courts of the County of San Diego, or if appropriate, in the United States District Court, Southern District of California, San Diego, California.

27. ELECTION OF REMEDIES

The pursuit by any Party of any specific remedy will not exclude any other remedy available to the Party.

28. TERMINATION OF THE AGREEMENT

28.1 City's Right to Terminate for Default. The Contractor's failure to satisfactorily perform any obligation required by this Amended and Restated Agreement constitutes a default. Examples of default include a determination by the City that the Contractor has: (1) failed to deliver goods or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Amended and Restated Agreement; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

28.1.1 If the Contractor fails to satisfactorily cure a default within 10 calendar days of receiving written notice from the City specifying the nature of the default, the City may immediately cancel or terminate this Amended and Restated Agreement, and terminate each and every right of the Contractor, and any person claiming any rights by or through the Contractor under this Amended and Restated Agreement.

28.1.2 In addition to, and cumulative to all other remedies in law, at equity and provided under this Amended and Restated Agreement, in the event the Contractor is in material default of its duties or obligations under this Amended and Restated Agreement and it fails to cure the default within 10 days after receipt of written notice of termination for default from the City, the City may, without waiving any other rights under this Amended and Restated Agreement, elect to withhold from the payments due to the Contractor during the period beginning with the day of the Contractor's receipt of notice of termination for default, and ending on the date that the default has been cured to the reasonable satisfaction of the City, an amount that is in proportion to the magnitude of the default or the service that the Contractor is not providing. Upon curing of the default by the Contractor, the City will release any withheld payments due to the Contractor, without interest.

28.1.3 If the City terminates this Amended and Restated Agreement, in whole or in part, the City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and the Contractor is liable to the City for any excess costs. The Contractor must also continue performance to the extent not terminated.

28.2. Termination for Bankruptcy or Assignment for the Benefit of Creditors. If the Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon the Contractor, terminate this Amended and Restated Agreement, and terminate each and every right of the Contractor, and any person claiming rights by and through the Contractor under this Amended and Restated Agreement.

28.3. Contractor's Right to Payment Following Termination.

28.3.1 In the event this Amended and Restated Agreement is terminated for cause as set forth under this section, the City will pay the Contractor for all Services satisfactorily performed up to the date the Amended and Restated Agreement is terminated. The City may deduct from such payment the amount of actual damage, if any, sustained by the City due to the Contractor's failure to perform the services or for breach of this Amended and Restated Agreement.

28.4. Remedies Cumulative. The City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the City may be lawfully entitled in case of any breach or threatened breach of any provision of this Amended and Restated Agreement.

28.5. Opportunity to Cure Default. Upon receipt of a notice of termination for default arising from the Contractor's default under this Amended and Restated Agreement, the Contractor has ten days from the receipt of the written notice to cure the default by performing the required obligation. If the default is cured to the satisfaction of the City, the Amended and Restated Agreement will remain in effect upon written acceptance of the cure by the Party who issued the notice of termination for default.

28.6. Termination Due to Unavailability of Funds. When funds are not appropriated or otherwise made available by the City to support continuation of performance, the Amended and Restated Agreement will be cancelled and the Contractor will be reimbursed for the reasonable value of any nonrecurring cost incurred but not amortized in the price of the supplies or services delivered under the Amended and Restated Agreement prior to termination.

29. NOTICES

All notices to the Parties must, unless otherwise requested in writing, be sent to the City addressed as follows:

City of San Diego
Office of the City Clerk Attn: Diana Fuentes
202 C Street, Second Floor MS 2A
San Diego, CA 92101
or by email dfuentes@sanidiego.gov

And to the Contractor addressed as follows:

NetFile
2707 Aurora Road
Mariposa, CA 95338
or by facsimile at (209) 391-2200 or by
email staffhelp@netfile.com

30. COMPLIANCE WITH ETHICAL STANDARDS

The Contractor must:

- a. Read and comply with the provisions set forth in Exhibit D, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SAN DIEGO, CALIFORNIA," attached and incorporated by this reference; and,
- b. Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS" attached and incorporated by this reference.

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The Parties acknowledge and accept the terms and conditions of this Amended and Restated Agreement as evidenced by the following signatures of their duly and authorized representatives. It is the intent of the Parties that this Amended and Restated Agreement will become operative on the Effective Date.

CITY OF SAN DIEGO
A Municipal Corporation

BY: [Signature]
Print Name: CHRISTIANA GAUGER

DATE: 10/20/2020

~~INTERIM~~ Director
Purchasing & Contracting Department

NETFILE, INC. [Signature]
BY: _____

DATE: 9/11/20

TOM DIEBERT
Vice President NetFile, Inc.
2707 Aurora Road
Mariposa, CA 95338
Telephone: (209) 742-4100
Facsimile: (209) 391-2200

Approved as to form this _____ day of _____, 2020.
MARA W. ELLIOTT, City Attorney

BY: _____

0-21242

**AMENDED AND RESTATED AGREEMENT
FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN
THE CITY OF SAN DIEGO
AND
NETFILE, INC.**

EXHIBIT A

SCOPE OF SERVICES

The services to be performed for the City by the Contractor under this Amended and Restated Agreement are described in detail in this Exhibit A, as follows:

A. EXPECTED OUTCOMES

NetFile will maintain existing system that permits the City of San Diego ("City") and users authorized by the City to (1) file FPPC Campaign Disclosure Forms in the CAL electronic format, to be available (in redacted form) for public viewing of documents over the Internet through a link on the City's website; (2) electronically file FPPC Statement of Economic Interest, Form 700 ("SEI") (up to 2,300 filers (Filers)) to be available (in redacted form) for public viewing of documents over the Internet through a link on the City's website; (3) automatically send 87200 Filers' SEI forms to FPPC's electronic filing system (e-disclosure) through data exchange; (4) maintain existing system and database of the FPPC Campaign Disclosure Forms and SEI forms to track filings and generate filing deadline, add late fines and amendment letters; (5) allow the City to scan campaign, SEI, and lobbyist reports or forms (Lobbyist Forms defined in Paragraph B below) not submitted electronically; (6) allow the City to manage, modify and generate the list of SEI Filers, campaign committees and lobbyists; (7) perform 20% review at the annual deadline for SEI; (8) maintain existing system that permits the electronic filing of local Lobbyist Forms; (9) maintain existing system for the purpose of processing and tracking electronic payments for the lobbyist fees. NetFile will not process payments or collect credit card data.

B. SUMMARY OF DELIVERABLES

NetFile will maintain the existing system that permits (1) electronic filing of FPPC Campaign Disclosure Forms and Statement of Economic Interest, Form 700 (hereinafter collectively referred to as FPPC Forms); and (2) availability of FPPC Forms in an electronic format (in redacted form) for public viewing of documents over the Internet through a link on the City's website. NetFile will also (3) maintain a database of the FPPC Forms to track filings and generate filing deadline and amendment letters; (4) allow the City to scan FPPC forms not submitted electronically; (5) maintain existing electronic filing system for local Lobbyist forms; and (6) maintain existing electronic payment system for lobbyist fees. In addition, during the period from September 30, 2019 through September 30, 2020 NetFile revised the City's lobbyist registration and disclosure forms to comply with San Diego Municipal Code section 27.4017 (a)(3)(F)(Lobbyist Forms).

C. SCOPE OF SERVICES

1. In providing the Services under this Amended and Restated Agreement, NetFile must maintain the existing system with the following capabilities:

(a) For Filers Using the Internet:

i. Allows the City to provide to Filers who have their own access to the Internet, a user ID and password which is used to log on to a secure site hosted on NetFile's web server but accessible via the City's web site.

ii. Allows Filers who have their own access to the Internet, to log on to, enter data in, and upload to NetFile's secure site electronic formats of FPPC used by the California Secretary of State and by the FPPC, SEI Forms, and currently supported existing Lobbyist Forms.

iii. Once the forms have been uploaded, NetFile's secure site validates the submitted filing and notifies the Filer that the filing was accepted or, if declined, explains why the filing was declined.

iv. Allows Filers to print a copy, using Adobe Acrobat Reader, of the forms that they upload to NetFile's secure site.

v. Allows Filers to access earlier validated electronically filed forms.

(b) For Filers Not Using NetFile's Online Campaign Disclosure Forms:

i. NetFile will provide to the City information for a Filer to file electronically using the current production version of the CAL format if they are so inclined instead of using NetFile's online service. System will allow any electronic filing in the current production version of the CAL format to be uploaded into NetFile's system either online or by some form of electronic media filed at the office of the City Clerk.

(c) For the City:

i. When a Filer does not use NetFile's online system, the City must be allowed to upload to NetFile's secure site FPPC Campaign Disclosure Forms submitted to the City in the current production version of the CAL format.

ii. Allows tracking of Filers and all electronically filed forms in a database.

iii. Allows the City to scan hard copy filings and post to the online searchable database provided a liability waiver is signed by the City absolving NetFile of any liability associated with manually redacted documents not under the control of NetFile during the redaction process.

(d) For All FPPC Forms Uploaded to NetFile's Secure Site:

i. Produces two versions in .pdf format of the FPPC Forms: one version, not accessible by the public, will include all information as filed (non-redacted); the other version, accessible by the public, will have all street addresses and bank account information, if applicable, blocked from view.

(e) For the Public:

i. Allows the public to search and view electronically filed documents (with street addresses and bank account information, if applicable, blocked from view) over the Internet.

ii. If a document was not available electronically, NetFile's secure site will notify the searcher that the document is available for viewing in the office of the City Clerk.

2. NetFile's system will, among other things:

- Issue an ID number and password for Filers.
- Grant different user access and security levels for City staff.
- Store and edit general information about Filers.
- Store and edit all filings by individual statement periods where applicable.
- Maintain a calendar of events.
- Generate notification letters telling the filer of the upcoming filing deadline.
- Indicate how filings were received.
- Track deadlines for filings and amendments and generate letters notifying Filers of delinquencies.
- Track delinquencies and generate letters notifying Filers of fines.
- Merge applicable information from the database and print various letters.
- Allow the public to search and view the database and complete list of electronic filings (with addresses and bank account information, if applicable, redacted) via the Internet.
- Allow the public to search and view the database and complete electronic filings (without addresses and bank account information redacted) on kiosk provided by the City located in office.
- Have sufficient back-up hardware and/or software and/or policies and procedures to ensure that data under the control of NetFile, relative to this Agreement, is not irretrievably lost or destroyed.
- Maintain currently supported lobbyist system features.

3. NetFile must provide unlimited support to the City staff by email or phone during NetFile's normal working business hours.

4. All intellectual property, including existing source code or additional source code written for the purpose of developing this system for the City, will be the sole property of NetFile. If NetFile ceases operations during the contractual period, NetFile will provide to the City, at no additional charge, all source code relative to the City's system. If the Amended and Restated Agreement is terminated or otherwise expires, NetFile will provide the City with electronic copies of any and all data it has collected and recorded within 15 working days. Data format will be agreed upon by both the City and NetFile, but at a minimum, data records will be provided in ASCII comma, separated value (CSV) format, with binary images in TIFF, JPG or PDF format.

D. HOSTING SERVICES

1. **Availability of Services.** Subject to the terms of this Amended and Restated Agreement, the Contractor must use its best efforts to provide online access to the City and Filers of FPPC Campaign Disclosure forms for 24 hours a day, seven days a week throughout the term of this Amended and Restated Agreement. The City agrees that from time to time the Contractor's servers may be inaccessible or inoperable for various reasons, including: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which the Contractor may undertake from time to time; or (iii) causes beyond the control of the Contractor or which were not reasonably foreseeable by the Contractor, including interruption or failure of communications or transmission links, hostile network attacks or other failures (collectively "Downtime"). The Contractor must provide 48-hour advance notice to the City in the event of any scheduled Downtime. The Contractor must use its best efforts to minimize any disruption, inaccessibility and/or inoperability in connection with the Downtime, whether scheduled or not.

2. **Backups.** The Contractor must maintain backup servers and telecommunications connections and maintain weekly backups of the City's database of FPPC Campaign Disclosure Form filings on such backup servers. The Contractor's disaster recovery and contingency planning, equipment, software, and telecommunications connections must enable the Contractor to provide the City with access on and from such backup servers within 48 hours of any disruption in service.

3. **Storage and Security.** The Contractor must operate and maintain the servers in good working order with access restricted to qualified employees of the Contractor. The Contractor must undertake and perform the measures set forth in Exhibit A to ensure the security, confidentiality subject to section D(4), Non-Disclosure, below, and integrity of all City content and other proprietary information transmitted through or stored on the Contractor's servers, including, without limitation: (i) firewall protection; (ii) maintenance of independent archival and backup copies of the City's content; and (iii) protection from any network attack and other harmful, malicious, or disabling data, work, code or program.

4. **Non-Disclosure.** The Contractor must comply with all laws and regulations applicable to the gathering, processing, storing, transmitting, and dissemination of personal information. The Contractor must not disclose any personal information accepted as required pursuant to California law and FPPC regulations, without the City's prior written consent, unless disclosure is (i) authorized pursuant to California disclosure laws and FPPC regulations; (ii) required by law or regulation, but only to the extent and for the purpose of such law or

regulation; (iii) is in response to a valid order of any court of competent jurisdiction or other government body, but only to the extent of and for the purpose of such order, and only if the Contractor first notifies the City of the order and permits the City to seek an appropriate protective order; or (iv) with written permission of the City in compliance with any terms or conditions set by the City regarding the disclosure.

E. PERFORMANCE STANDARDS

NetFile servers must have a guaranteed uptime of 99%.

F. PAYMENT SCHEDULE

After executing this Amended and Restated Agreement, the payment for services shall be as follows: NetFile will submit an invoice for ongoing services of Campaign Disclosure Forms, SEI Forms, Lobbyist Forms in the amount of \$40,625.00, per quarter (total amount not to exceed \$81,250), for the period of October 1, 2020 through April 30, 2021 unless this paragraph is subsequently modified by a written amendment to this Amended and Restated Agreement.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN
THE CITY OF SAN DIEGO
AND
NETFILE, INC.**

EXHIBIT B

SCHEDULE OF FEES

Upon the effective date of this Amended and Restated Agreement, the payment for Services, described in detail in Exhibit A, will be as follows:

1. For the period from September 30, 2019 through September 30, 2020, NetFile will submit an invoice for ongoing Services related to Campaign Disclosure Forms, SEI Forms, and Lobbyist Forms in the amount of \$18,750 per quarter, with the total amount for this period not to exceed \$75,000.
2. For the period from October 1, 2020 through April 30, 2021, NetFile will submit an invoice for ongoing Services related to Campaign Disclosure Forms, SEI Forms, and Lobbyist Forms in the amount of forty thousand six hundred and twenty-five dollars (\$40,625.000) per quarter, with the total amount for this period not to exceed \$81,250. Contractor will bill the City in advance of each quarter of service with terms of net 30 days due from the date of the invoice. The City may, in its sole discretion, upon City Council approval of funding and upon a 30-day advance written notice to the Contractor, extend this Amended and Restated Agreement, on the same terms and conditions, including the per-quarter pricing set forth in this paragraph, until September 30, 2021.
3. The total amount of fees that the City is obligated to pay under this Amended and Restated Agreement must not exceed \$75,000 for the period from September 30, 2019 through September 30, 2020, and \$81,250 for the period from October 1, 2020 through April 30, 2021, unless an increase in this amount is approved by the City's Purchasing Agent, Mayor, or City Council, as legally required.
4. All invoices must be submitted to the Clerk's Accounts Payable by electronic mail to cityclerk@sandiego.gov, directed to the City Clerk as follows:

San Diego City Clerk
Accounts Payable
202 C Street, Second Floor MS 2A
San Diego, California 92101

5. The Contractor must submit the following information with each invoice:
 - (a) Date of invoice;
 - (b) Detailed description of Deliverable, including any associated items and/or services, for which City is being invoiced (e.g., Milestone number); and,
 - (c) Price, as applicable.
6. The City and the Contractor agree to negotiate in good faith as to any disputes regarding the payment of the Contractor's invoices by the City.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN
THE CITY OF SAN DIEGO
AND
NETFILE, INC.**

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor must purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage that must in no event be less than, the following:

\$1,000,000 each occurrence
\$1,000,000 general aggregate
\$1,000,000 personal injury

2. Exact structure and layering of the coverage will be left to the discretion of the Contractor; however, any excess or umbrella policies used to meet the required limits must be at least as broad as the underlying coverage and must otherwise follow form.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at with minimum policy limits of not less than one million dollars (\$1,000,000) each accident. Liability coverage must apply to all owned autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with the following limits: at least one million dollars (\$1,000,000) policy limit Illness/Injury by disease, and one million dollars (\$1,000,000) for each Accident/Bodily Injury.

2. The indemnification and hold harmless obligations of the Contractor included in this Agreement must not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for the Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of San Diego, its City Council, commissions, officers, and employees.

D. COMPLIANCE WITH REQUIREMENTS

All the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. The City of San Diego, its City Council, commissions, officers, and employees are hereby added as additional insureds in respect to liability arising out of Contractor's work for the City.

2. Primary and non-contributing. Each insurance policy provided by the Contractor must contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess will be considered excess insurance only and will not be called upon to contribute with the Contractor's insurance.

3. Cancellation. Each insurance policy must contain language or be endorsed to reflect that no cancellation or modification of the coverage provided must be effective until written notice has been given to the City at least 30 days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice must be given at least 30 days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

The Contractor and the City agree as follows:

1. The Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by the Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits the Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. The Contractor agrees that upon request by the City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to the City for review.

2. The Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge the City or the Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the City. It is not the intent of the City to reimburse any third party for the cost of complying with these requirements. There must be no recourse against the City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Amended and Restated Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Amended and Restated Agreement, the Contractor, and each and every subcontractor (of every tier) must, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage must be maintained with insurers, and under forms of policies, satisfactory to the City and as described in this Amended and Restated Agreement. The Contractor must file with the City all certificates and endorsements for the required insurance policies for the City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

The Contractor or its insurance broker must provide the required proof of insurance compliance, evidencing all required coverage must be delivered to the City, or its representative as set forth below, at or prior to execution of this Amended and Restated Agreement. Upon the City's request, the Contractor must submit to the City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Amended and Restated Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Amended and Restated Agreement must be faxed or mailed to:

City of San Diego City Clerk's Office
202 C. Street, 2nd Floor (MS 2A)
San Diego, CA 92101
Telephone: (619)533-4000
Fax: (619)533-4045

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for the Contractor must have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or must be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN
THE CITY OF SAN DIEGO
AND
NETFILE, INC.**

EXHIBIT D

**ETHICAL STANDARDS FOR CONTRACTORS
SEEKING TO ENTER INTO AN AGREEMENT WITH
THE CITY OF SAN DIEGO, CALIFORNIA**

Termination of Agreement for Certain Acts

A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct will be evidence of such knowledge, approval or acquiescence.

B. The City may also terminate this Agreement in the event any one or more of the following occurs:

1. The City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,

2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within 10 days of the notice given by City to have the matter heard. The matter will be heard within 30 days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor will have the opportunity to present evidence, both oral and documentary, and argument.

⁴ The Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of the Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN
THE CITY OF SAN DIEGO
AND
NETFILE, INC.**


EXHIBIT E

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS
[CITY OF SAN DIEGO]**

I, Tom Diebert, being first duly sworn, depose and say that I am the Vice President of NetFile and I hereby state that I have read and understand the language, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SAN DIEGO, CALIFORNIA" (herein "Ethical Standards") set forth in Exhibit D. I have authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Contractor" contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit D [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in Exhibit D within the past 5 years. The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

NetFile, Inc.

By 

Tom Diebert
Vice President, NetFile, Inc.

Item 54
9/29/2020

(O-2021-23)

ORDINANCE NUMBER O- 21242 (NEW SERIES)

DATE OF FINAL PASSAGE OCT 06 2020

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN DIEGO, APPROVING AND RATIFYING AN AMENDED
AND RESTATED AGREEMENT BETWEEN THE CITY OF
SAN DIEGO AND NETFILE, INC., RELATED TO
ELECTRONIC FILING OF CAMPAIGN DISCLOSURES,
CONFLICT-OF-INTEREST STATEMENTS, AND LOBBYIST
DISCLOSURES REQUIRED BY CALIFORNIA AND LOCAL
LAW.

WHEREAS, the California Political Reform Act requires designated state and local government officers and employees to publicly disclose certain financial assets and income, and the Fair Political Practices Commission (FPPC) is responsible for the administration of the Political Reform Act; and

WHEREAS, the Statement of Economic Interests (SEI), also known as the FPPC's Form 700, is a public document, which designated public officers and employees, including consultants and some volunteer board members, use to disclose these financial interests; and

WHEREAS, in addition, disclosure reports are required for lobbyists seeking to influence municipal decisions and campaign disclosures are required of candidates for elective City of San Diego (City) office and campaign committees; and

WHEREAS, the FPPC and the City's Ethics Ordinance, codified in the San Diego Municipal Code, require that the filed forms be made available to the public for viewing; and

WHEREAS, the City has had a contractual relationship with NetFile, Inc (NetFile) since approximately 2004, relating to providing the City with software services for the City's electronic filing portal for campaign disclosure statements; and

WHEREAS, an agreement for services was executed by the City and NetFile, effective October 6, 2016, which established a centralized filing portal for FPPC Campaign Disclosures and SEI forms; and

WHEREAS, the City entered into an agreement with NetFile, effective September 30, 2019 (2019 Agreement), to provide the following, additional services: maintain and upgrade a system that permits the City and users authorized by the City to: (1) file FPPC Campaign Disclosure Forms in the CAL electronic format, to be available (in redacted form) for public viewing of documents over the Internet through a link on the City's website; (2) electronically file SEI forms; (3) maintain and upgrade a database of the FPPC Campaign Disclosure Forms and SEI forms to track filings and generate filing deadline and amendment letters; (4) allow the City to scan Campaign and SEI reports/forms not submitted electronically; (5) maintain and upgrade a system that permits the electronic filing of local lobbyist forms; and (6) maintain and upgrade a system for the purpose of processing and tracking electronic payments for the lobbyist fees; and

WHEREAS, the City's Purchasing Agent approved the 2019 Agreement, in accordance with Municipal Code sections 22.3203(b) and 22.3208(d), and relying on a sole source certification, dated September 16, 2019; and

WHEREAS, City staff have initiated a competitive bidding process to identify a successor service provider, but this process has faced delays, in part due to COVID-19 and the re-prioritization of resources caused by the ongoing public health emergency; and

WHEREAS, the 2019 Agreement will expire on September 30, 2020, and the Office of the City Clerk wishes to extend the term of the 2019 Agreement for six additional months and to modify certain terms, as requested by NetFile, to ensure continuity of necessary services; and

WHEREAS, the extension will continue the contractual relationship between the City and NetFile, requiring compliance with San Diego Charter section 99, which provides that no contract, agreement, or obligation where the City incurs debt extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds' majority vote of the City Council; and

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, an Amended and Restated Agreement for the Performance of Services, by and between the City and Netfile, Inc., on file with the Office of the City Clerk, as Document No. 00-21242, with the intent that this Document supersedes the agreement between the City and NetFile, Inc., initially approved and effective on September 30, 2019, and, with the further intent, that the Amended and Restated Agreement includes an extension of the City's agreement with NetFile, Inc., requiring City Council ratification of the agreement in accordance with Charter section 99.

Section 2. That a two-thirds vote is required for City Council approval of this ordinance, pursuant to Charter Section 99.

Section 3. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Anjana Pottathil
Anjana Pottathil
Deputy City Attorney

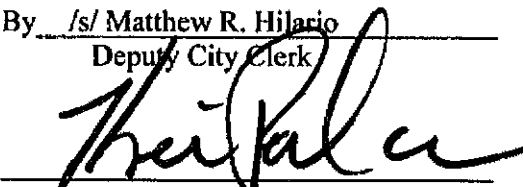
API:JFD:jdf
08/31/2020
Or.Dept: City Clerk
Doc. No.: 2465288

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 09/29/2020.

ELIZABETH S. MALAND
City Clerk

By /s/ Matthew R. Hilario
Deputy City Clerk

Approved: 10/6/2020
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on SEP 29 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 06 2020.

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy
for Matthew Hilario

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

SEP 15 2020

, and on OCT 06 2020.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy
for Matthew Hilario

Office of the City Clerk, San Diego, California

Ordinance Number O- 21242

Passed by the Council of The City of San Diego on September 29, 2020, by the following vote:

YEAS: BRY, CAMPBELL, WARD, MONTGOMERY, KERSEY, CATE, SHERMAN,
MORENO, & GÓMEZ.

NAYS: NONE.

NOT PRESENT: NONE.

RECUSED: NONE.

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Connie Patterson, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
ORDINANCE NO. O-21242 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days
had elapsed between the day of its introduction and the day of its final passage, to wit, on
September 15, 2020, and on October 6, 2020.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such
reading was dispensed with by a vote of five members of the Council, and that a written
copy of the ordinance was made available to each member of the Council and the public
prior to the day of its passage.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: Connie Patterson, Deputy