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AGREEMENT FOR THE PERFORMANCE OF SERVICES

BY AND BETWEEN

CITY OF FRESNO

AND

WESTCOAST ONLINE INFORMATION SYSTEMS, INC. DBA NETFILE

CITY OF FRESNO
City Clerk's Office (Original)

This Agreement for the performance of services ("Agreement") is made and entered into on this 15th day of June, 2013 ("Effective Date"), by and between Westcoast Online Information Systems, Inc. dba NetFile, a California corporation, with its principal place of business located at 2707 Aurora Road, Mariposa, California 95338 ("Contractor"), and the City of Fresno, a California municipal corporation, with its principal place of business located at 2600 Fresno St., Fresno, CA 93721 ("City"). City and Contractor may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

Whereas:

- A. City desires to continue with professional services more fully described in this Agreement;
- B. Contractor represents that it, and its sub-contractors, if any, have the professional qualifications, expertise, desire and any license(s) necessary to provide certain goods and/or required services of the quality and type which meet the City's requirements; and,
- C. The Parties have specified in this Agreement the terms and conditions under which such services will be provided and paid for.

Contractor and City agree as follows:

AGREEMENT PROVISIONS

1. SERVICES TO BE PROVIDED

Contractor shall perform to the satisfaction of City the services ("Services") described in Exhibit A entitled, "SCOPE OF SERVICES" including all work incidental to, or necessary to perform, such services even though not specifically described in Exhibit A. Contractor shall furnish all necessary technical and professional services, including labor, material, equipment, transportation, supervision and expertise to satisfactorily complete the work required by City at his/her own risk and expense.

2. TERM OF AGREEMENT

This Agreement shall become effective June 15, 2013 and terminate at the end of the day June 15, 2018, subject to any earlier termination in accordance with this Agreement. The fee for this

APPROVED BY CITY COUNCIL
June 27, 2013

By Sherril Badetoch
DEPUTY

service is listed in the "Compensation and Payment" section below. After June 15, 2018, this Agreement may be continued by mutual written agreement of both Parties.

3. COMPENSATION AND PAYMENT

The City qualifies for a special "Budget Buster" promotion offered at the California City Clerks Conference for a special discount off regular pricing. The intent of the Budget Buster promotion is to give the City the option of using the NetFile systems on a demo basis until the City recovers from its budget crisis. This promotion is good for up to 3 years. After the 3rd year, the City may continue using the system at the normal contract rate or discontinue service at no cost to the City. Partial payments to the normal contract rate are encouraged in this promotion. It will be at the City's discretion to apply any amount up to the normal contract rate for the first 3 years of service.

(a) For the time period of June 15, 2013 through June 15, 2014, Contractor will provide the use of the Campaign Disclosure System and Statement of Economic Interests system (up to 550 SEI filers) at a normal rate of \$28,000. The City will pay a reduced rate for this time period dependent upon budget approval. The lowest rate the City can pay during this time period is the demo rate of zero dollars (\$0.00).

(b) For the time period of June 15, 2014 through June 15, 2015, Contractor will provide the use of the Campaign Disclosure System and Statement of Economic Interests system (up to 550 SEI filers) at a normal rate of \$28,000. The City will pay a reduced rate for this time period dependent upon budget approval. The lowest rate the City can pay during this time period is the demo rate of zero dollars (\$0.00).

(c) For the time period of June 15, 2015 through June 15, 2016, Contractor will provide the use of the Campaign Disclosure System and Statement of Economic Interests system (up to 550 SEI filers) at a normal rate of \$28,000. The City will pay a reduced rate for this time period dependent upon budget approval. The lowest rate the City can pay during this time period is the demo rate of zero dollars (\$0.00).

(d) For the time period of June 15, 2016 through June 15, 2018, Contractor will provide the use of the Campaign Disclosure System and Statement of Economic Interests system (up to 550 SEI filers) at a normal annual rate of \$28,000.

(e) City has the option of paying on an ongoing quarterly basis for Services provided by Contractor billed in advance of the quarter instead of one annual payment. No interest or finance charges will be incurred if the City chooses the quarterly payment option. City will pay Contractor within thirty (30) days of City's receipt of invoice. If for any reason the contract is terminated prior to the paid through date by the City, Contractor will reimburse City any unused amount within ten (10) working days from the termination date.

(f) Invoices shall be rendered quarterly for services performed in advance of the preceding quarter and will be payable in the normal source of City business. The City shall not be obligated to reimburse any expense for which it has not received a detailed invoice with

applicable copies of representative and identifiable receipts or records substantiating such expense.

(g) The Parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to Contractor's compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. Contractor shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. NO ASSIGNMENT OF AGREEMENT

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor agrees not to assign the payment of any monies due to Contractor from the City under the terms of the Agreement to any other individual(s), corporation(s), or entity(ies). City retains the right to pay any and all monies due to Contractor directly to Contractor.

5. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action under this Agreement.

6. INDEPENDENT CONTRACTOR

(a) In the furnishing of the services provided for herein, Contractor is acting solely as an independent contractor. Neither Contractor, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which Contractor shall perform its work and functions. However, City 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) This Agreement does not evidence a partnership or joint venture between Contractor and City. Contractor shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this Agreement, Contractor shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, Contractor and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. Contractor shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Contractor shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment

of Contractor's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, Contractor may be providing services to others unrelated to City or to this Agreement.

7. SUBCONTRACTING

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

8. USE OF CITY NAME OR EMBLEM

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

9. AUDITS

City, through its authorized representatives, has the right during the term of this Agreement, and for three (3) years from the date of final payment for goods and/or Services provided under this Agreement, to audit the books and records of Contractor regarding matters covered by this Agreement. Contractor agrees to maintain accurate books and records in accordance with generally accepted accounting principles. Any expenses not so recorded shall be disallowed by City. Contractor agrees to help City meet any reporting requirements with respect to Contractor's Services if requested by City in writing.

10. QUALIFICATIONS OF CONTRACTOR

Contractor represents that its personnel and subcontractors, if any, are qualified to furnish Services of the type and quality which City requires. City expressly relies on Contractor's representations regarding its skills and knowledge. Contractor shall promptly perform all Services requested by City in a safe manner and in accordance with all federal, state, and local operation and safety regulations. Contractor shall work closely with and be guided by City. Contractor shall also perform all work in accordance with generally accepted business practices and performance standards of the industry.

11. MONITORING OF SERVICES

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

12. WARRANTY

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

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 to provide all related materials and services as set forth in Exhibit A, without violating any rights of any 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 Contractor.

Contractor further warrants that NetFile servers have a guarantee uptime of 99% (which includes all scheduled maintenance throughout the year) and for so long as City shall pay the fees described in this Agreement (a) the System will be materially free of errors, and (b) Contractor will provide the Professional Services in a professional and workmanlike manner consistent with the highest industry standards. Contractor further warrants, during the term of this Agreement, that (i) the NetFile servers will be free of any Harmful Code (as defined below), and (ii) Contractor will not interfere with or disrupt City's or the User's use of the System. For purposes of this 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, but is not limited to, self-replacing and self-propagating programming instructions commonly called "viruses," "Trojan horses" and "worms." Contractor agrees to implement reasonable procedures adequate to prevent any software, link or code provided to City hereunder from being contaminated with Harmful Code. If Contractor learns of or suspects the existence of any Harmful Code, Contractor will immediately notify City and make every effort to remove the Harmful Code.

13. NON-DISCRIMINATION

To the extent required by controlling federal, state and local law, Contractor shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability,

mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, Contractor agrees as follows:

(a) Contractor will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) Contractor will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Contractor shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to Contractor's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If Contractor should subcontract all or any portion of the services to be performed under this Agreement, Contractor shall cause each subcontractor to also comply with the requirements of this Section.

14. CONFIDENTIALITY

(a) Confidential Information. During the course of the Parties' relationship, a Party may have access to the other Party's Confidential Information. The Parties agree that the term "Confidential Information" shall mean any information, technical data, or know-how, including,

without limitation, that which relates to research, products, services, customers, markets, inventions, processes, designs, marketing, future business strategies, trade secrets, finances, and other nonpublic information, including employee information, of the disclosing Party, including the details of this Agreement. The amount and type of Confidential Information to be disclosed is completely within the sole discretion of each Party.

(b) Non-Confidential Information. The Parties agree that Confidential information does not include a Party's information which the other Party can establish by legally sufficient evidence: (i) was in the possession of, or was rightfully known by a Party without an obligation to maintain its confidentiality prior to its receipt from the other Party; (ii) is or becomes known to the public without violation of this Agreement; (iii) is obtained by a Party in good faith from a third party having the right to disclose it without an obligation of confidentiality; (iv) is independently developed by a Party without use, directly or indirectly, of Confidential Information received from the other Party; or (v) is authorized in writing by a Party to be released from the confidentiality obligations herein.

(c) Non-Disclosure. Each Party agrees that it shall not use or permit the use of any Confidential Information of the other Party except for purposes of this Agreement, nor disclose or permit to be disclosed the Confidential information of the other Party to any person or entity (other than its own employees, agents, representatives or affiliated entities having a reasonable need for such information in order to provide the Services), nor duplicate any Confidential Information of the other Party which consists of computer software or documentation or other materials expressly restricted against copying, unless such duplication, use or disclosure is specifically authorized in writing by the other Party.

(d) Legal Disclosure. If it is reasonably necessary for the receiving Party to disclose any Confidential Information to (i) enforce this Agreement, (ii) comply with a judicial or administrative proceeding or similar process, or (iii) comply with a rule of regulatory authority which has jurisdiction over receiving Party, the receiving Party will, if permitted, provide the disclosing Party with prompt written notice so that the disclosing Party may, at the disclosing Party's sole expense, seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event such protective order or other remedy is not obtained, the receiving Party will not be in breach of Section 14(c) by furnishing such Confidential Information as legally required and will exercise commercially reasonable efforts to obtain assurance that confidential treatment will be accorded the Confidential information so disclosed, at the disclosing Party's expense.

15. CONTRACTOR TO HOLD CITY HARMLESS

Subject to the limitations set forth in Exhibit A (SCOPE OF SERVICES) Section E (LIMITATION OF LIABILITY). Contractor shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence,

recklessness or willful misconduct of Contractor, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If Contractor should subcontract all or any portion of the services to be performed under this Agreement, Contractor shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

16. INSURANCE REQUIREMENTS

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

(b) If at any time during the life of the Agreement or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Contractor shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Contractor of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its principals, officers, agents, employees, persons under the supervision of Contractor, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of City, Contractor shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If Contractor should subcontract all or any portion of the services to be performed under this Agreement, Contractor shall require each subcontractor to provide insurance protection in favor of City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with Contractor and City prior to the commencement of any services by the subcontractor.

17. AMENDMENTS

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

18. INTEGRATED DOCUMENT

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

19. SEVERABILITY CLAUSE

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

20. LAW GOVERNING CONTRACT

This Agreement shall be governed and interpreted using the laws of the State of California.

21. DISPUTE RESOLUTION

(a) Any controversies or claims between Contractor and City regarding this Agreement must first be put in writing and delivered to the other Party. The Parties will meet in good faith to attempt to resolve the issue in question. If the Parties fail to come to an agreement on the resolution of the issue, all required administrative procedures must be followed. If all administrative procedures are exhausted and the Parties are unable to resolve the issue, the matter must be submitted to mediation within thirty (30) calendar days after the written request for mediation is delivered by one Party.

(b) The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request that the Superior Court of San Joaquin City appoint a mediator. The mediation meeting shall not exceed one work day [eight (8) hours]. The Parties may agree to extend the time allowed for mediation under this Agreement.

(c) Mediation under this section is a condition precedent to filing an action in any court. In the event litigation or mediation arises out of any dispute related to this Agreement, the

Parties shall each pay their respective attorneys' fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

(d) Only after both the administrative dispute resolution procedure and the mediation procedure have failed to resolve a dispute between the Parties may one or both of the Parties file suit in the appropriate civil court.

22. VENUE

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

23. ELECTION OF REMEDIES

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

24. CONFLICT OF INTERESTS

This Agreement does not prevent either Party from entering into similar agreements with other parties.

(a) Prior to City's execution of this Agreement, Contractor shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, Contractor shall have the obligation and duty to immediately notify City in writing of any change to the information provided by Contractor in such statement.

(b) Contractor shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of City, Contractor shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, Contractor and the respective subcontractor(s) are in full compliance with all laws and regulations. Contractor shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, Contractor shall immediately notify City of these facts in writing.

(c) In performing the work or services to be provided hereunder, Contractor shall not employ or retain the services of any person while such person either is employed by City or is a member of any City council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) Contractor represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither Contractor, nor any of Contractor's subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. Contractor and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, Contractor shall remain responsible for complying with Section 24(b), above.

(f) If Contractor should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, Contractor shall include the provisions of this Section 24 in each subcontract and require its subcontractors to comply therewith.

25. TERMINATION OF THE AGREEMENT

(a) Termination Without Cause. Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

(b) Termination For Cause. For purposes of this Agreement, the term "default" shall mean the failure of any Party to perform any material obligation in the time and manner provided by this Agreement. Either Party may terminate this Agreement in the event of a default by the other Party by providing a written Notice of Termination to the defaulting Party. Such Notice of Termination shall become effective no less than ten (10) calendar days after a Party receives such notice. Such Notice of Termination for cause shall include a statement by the terminating Party setting forth grounds for determination of default under the Agreement. In the event this Agreement is terminated for cause as set forth under this section, City shall pay Contractor for all Services satisfactorily performed up to the date the Agreement is terminated. City may deduct from such payment the amount of actual damage, if any, sustained by City due to Contractor's failure to perform the Services or for breach of this Agreement.

(c) Opportunity to Cure Default. Upon receipt of a Notice of Termination for Cause by a Party arising from its default under this Agreement, the defaulting Party shall have five (5) days from the receipt of such notice to cure the default by making such payment or performing the required obligation. If the default is cured to the mutual satisfaction of the Parties, the

Agreement shall remain in effect upon written acceptance of the cure by the Party who issued the Notice of Termination for Cause.

In addition to, and cumulative to all other remedies in law, at equity and provided under this Agreement, in the event Contractor is in material default of its duties or obligations under this Agreement and it fails to cure the default within five (5) days after receipt of written notice of Termination for Cause from City, City may, without waiving any other rights under this Agreement, elect to withhold from the payments due to Contractor under this Agreement during the period beginning with the 6th day after Contractor's receipt of notice of Termination for Cause, and ending on the date that the default has been cured to the reasonable satisfaction of City, an amount that is in proportion to the magnitude of the default or the service that Contractor is not providing. Upon curing of the default by Contractor, City will cause the withheld payments to be paid to Contractor, without interest.

(d) Termination Due to Unavailability of Funds. When funds are not appropriated or otherwise made available by the City to support continuation of performance, the Agreement shall be cancelled and the Contractor shall 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 Agreement prior to termination.

(e) Data Recovery. If the services are terminated for any reason, the City will receive a DVD copy of all data created in the system by the City within 10 working days of notification of termination.

(f) Deletion of Data. The City has the right at any time during the contract period as well as upon the termination of the Agreement to instruct the Contractor to delete all City created data in the system. This request must be in writing and the Contractor has 21 working days to complete the deletion of the data from the system.

26. NOTICES

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

City of Fresno
City Clerk
2600 Fresno St.
Fresno, CA 93721

And to Contractor addressed as follows:

NetFile
2707 Aurora Road
Mariposa, CA 95338
or by facsimile at (209) 391-2200

27. HOSTING SERVICES

(a) Availability of Services. Subject to the terms of this Agreement, Contractor shall use its best efforts to provide online access to the City and filers of FPPC forms for twenty-four (24) hours a day, seven (7) days a week upon completion of the parsed database and accepted by the City and thereafter, throughout the term of this Agreement. City agrees that from time to time Contractor's servers may be inaccessible or inoperable for various reasons, including: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which Contractor may undertake from time to time; or (iii) causes beyond the control of Contractor or which were not reasonably foreseeable by Contractor, including interruption or failure of communications or transmission links, hostile network attacks or other failures (collectively "Downtime"). Contractor shall provide forty-eight (48) hour advance notice to City in the event of any scheduled Downtime. Contractor shall use its best efforts to minimize any disruption, inaccessibility and/or inoperability in connection with the Downtime, whether scheduled or not. In the event of any Downtime, City shall be entitled to a pro-rata reduction of any payments due and payable to Contractor for such period.

(b) Backups. Contractor shall maintain backup servers and telecommunications connections and maintain weekly backups of City's database of FPPC Form filings on such backup servers. Contractor's disaster recovery and contingency planning, equipment, software, and telecommunications connections shall enable Contractor to provide City access on and from such backup servers within forty-eight (48) hours of any disruption in service.

(c) Storage and Security. Contractor shall operate and maintain the servers in good working order with access restricted to qualified employees of Contractor and persons specifically designated by City. Contractor shall undertake and perform the measures set forth in Exhibit A to ensure the security, confidentiality subject to Section 27 d. below, and integrity of all City content and other proprietary information transmitted through or stored on Contractor's server(s), 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.

(d) Non-Disclosure. Contractor shall comply with all laws and regulations applicable to the gathering, processing, storing, transmitting and dissemination of personal information. Contractor will not disclose any personal information accepted as required pursuant to the FPPC Forms laws, without City's prior written consent, unless such disclosure is (i) authorized pursuant to the FPPC Disclosure laws; (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 Contractor first notifies City of the order and permits City to seek an appropriate protective order; or (iv) with written permission of City in compliance with any terms or conditions set by City regarding such disclosure.

28. OWNERSHIP OF DATA

All data created in the system by the City or users authorized by the City is the property of the City. All source code created by the Contractor is the property of the Contractor.

29. UPGRADES TO SYSTEM

All upgrades to the system by Contractor will be gratis to the City unless mutually agreed upon by both parties in writing.

30. LIABILITY FOR CITY SCANNED DOCUMENTS

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.

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

31. HEADINGS

The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

32. INTERPRETATION

The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

33. ATTORNEY'S FEES

If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

34. EXHIBITS

Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

35. PRECEDENCE OF DOCUMENTS

In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

36. EXTENT OF AGREEMENT

Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Contractor.

CITY OF FRESNO,
a California municipal corporation

By: Jason McDonald
Jason McDonald, Purchasing Manager
MACDONALD

Westcoast Online Information Systems, Inc. dba NetFile

By: Tom Diebert
TOM DIEBERT
Vice President

Westcoast Online Information Systems, Inc. dba Netfile
2707 Aurora Road
Mariposa, CA 95338
Telephone: (209) 742-4100

ATTEST:
YVONNE SPENCE, CMC
CITY CLERK

By: Sherrin J. Badubeh
Deputy 8/8/13

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE
BY: Stacy Pawanion
CITY ATTORNEY

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN
CITY OF FRESNO
AND
NETFILE**

EXHIBIT A

SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are more fully described in the Contractor's proposal which is added to this Exhibit A and incorporated by this reference.

EXHIBIT A – CONTRACT SPECIFICS

A. Expected Outcome

NetFile will develop and maintain a system that permits the City of Fresno ("City") and users authorized by the City to (1) Electronically file FPPC Statements of Economic Interest, Form 700 ("SEI") and to be available, at the option of the City (in redacted form) for public viewing of documents over the Internet through a link on the City's website; (2) maintain a database of the FPPC SEI forms to track filings and generate filing deadline and amendment letters and (3) allow the City to scan SEI reports/forms not submitted electronically.

NetFile will develop and maintain a system that permits the City and all filers who have a political disclosure reporting responsibility to the City and authorized by the City to (1) file any or all of the FPPC Forms 450, 460, 461, 465, 470, 496, and 497 in 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) maintain a database of the FPPC Forms to track filings and generate filing deadline and amendment letters; and, (3) allow the City to scan reports not submitted electronically.

B. Deliverables

NetFile will continue to have ready for use a system that permits (1) electronic filing of FPPC Statement of Economic Interest, Form 700 and Campaign Disclosure Forms 450, 460, 461, 465, 470, 496, and 497 (hereinafter collectively referred to as "FPPC Forms"); (2) at the option of the City, availability of FPPC Forms in an electronic format to be available (in redacted form) for public viewing of documents over the Internet through a link on the City's website; (3) maintaining a database of the FPPC Forms to track filings and generate filing deadline and amendment letters and (4) allow the City to scan FPPC Forms not submitted electronically.

C. Scope of Service

1. From the date of execution of the service agreement, NetFile will develop and maintain a system that:

(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 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 the City:

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

ii. Allows 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.

(c) 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, at the option of the City, accessible by the public, will have all street addresses and bank account information, if applicable, blocked from view.

(d) For the Public:

i. At the option of the City, 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 Registrar.

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.
- 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.
- At the option of the City, 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.
- At the option of the City, 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.

3. NetFile will also:

- 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 were to cease operations during the contractual period, NetFile would provide to the City all source code relative to the City's system.

D. Performance Standards

Performance standards are based upon providing deliverables according to the timeline for performance as determined by Project Manager (City Clerk), and whether the system meets the expected outcome in terms of timeliness and functionality.

NetFile servers have a guaranteed uptime of 99%.

E. Additional Terms Submitted by NetFile

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, shall be limited to the total amount of fees received during the last 12 months by NetFile from the City hereunder up to the time the cause of action giving rise to such liability occurred. In no event shall 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 B, the limits of liability to City by NetFile shall not be less than the amount of applicable, valid, and collectible insurance set forth in Exhibit B.

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**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN
CITY OF FRESNO
AND
NETFILE**

EXHIBIT B

INSURANCE REQUIREMENTS

INSURANCE COVERAGE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall 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 shall 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 shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

B. 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 Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
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**Exhibit C
DISCLOSURE OF CONFLICT OF INTEREST**

[Project Title]
PROJECT TITLE

| | | YES* | NO |
|---|---|--------------------------|-------------------------------------|
| 1 | Are you currently in litigation with the City of Fresno or any of its agents? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2 | Do you represent any firm, organization or person who is in litigation with the City of Fresno? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3 | Do you currently represent or perform work for any clients who do business with the City of Fresno? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4 | Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5 | Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 6 | Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| * If the answer to any question is yes, please explain in full below. | | | |

Explanation: _____

Tom Diebert
 Signature
7/31/13
 Date
TOM DIEBERT
 (Name)
WESTCOAST ONLINE INFORMATION SYSTEMS, INC.
 (Company) DBA NETFILE
2707 AURORA RD
 (Address)
MARIPOSA, CA 95338
 (City, State, Zip)

Additional page(s) attached.