

REPORT TO CITY COUNCIL

DATE: NOVEMBER 8, 2023

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: NATHAN HAMBURGER, CITY MANAGER

BY: KIMBERLY M. RODRIGUES, CITY CLERK

SUBJECT: INTRODUCTION OF AN ORDINANCE REGARDING ELECTRONIC FILING OF CAMPAIGN DISCLOSURE STATEMENTS AND STATEMENTS OF ECONOMIC INTERESTS AND REQUEST TO APPROVE AN AGREEMENT FOR CONSULTANT SERVICES FOR THE FILING OF ELECTRONIC CAMPAIGN DISCLOSURE STATEMENTS

The request before the City Council is to waive full reading and introduce Ordinance No. 23-474, Adding Chapter 12 (Electronic Filing of Campaign Disclosure Statements and Statements of Economic Interests) to Article II (Administration) of the Agoura Hills Municipal Code and approve an Agreement for Consultant Services for the filing of electronic campaign disclosure statements.

The City Clerk is responsible for the annual filing of Fair Political Practices Commission (FPPC) Form 700 Statement of Economic Interests (SEI) by 87200 filers (City Council, Planning Commission, City Manager, City Treasurer, and City Attorney) and designated City staff, boards, commissions, and consultants. In late 2017, the City acquired an annual electronic subscription with Netfile for all SEI filings. The electronic subscription eliminated the need for filers to submit a signed original to the City. Instead, the process is paperless and filers are able to meet their filing obligation through the City's electronic system. In addition, statements filed by any of the City's 87200 filers are electronically transmitted to the FPPC, eliminating the need to mail a signed original. The system features an initial review process that alerts the filer of errors at the time they enter their information, thereby minimizing the need for the City Clerk to request amendments. Netfile also eliminates the need for the City Clerk to redact the document, as it automatically redacts and posts each filing to the City's website portal for complete transparency to the public. To date, there have not been any issues with electronic filings and filers have been in compliance with meeting their SEI filing obligations.

The Political Reform Act ("Act") recognizes candidate election campaigns that raise or spend more than \$2,000 as "controlled committees." Under the Act, these committees are obligated to file detailed campaign disclosure statements, also known as FPPC Form 460s. The City Clerk is the local filing officer for the City of Agoura Hills, and, in addition to SEI filings, is responsible for receiving, reviewing, and storing campaign disclosure information, as well as making it accessible to the public.

Every election cycle, City Council candidates are required to file campaign disclosure statements and, if elected, each respective Councilmember will be required, along with current Council incumbents, to continue to file annually throughout his/her term of office. Effective January 1, 2021, Assembly Bill (AB) 2151 required cities to post any campaign disclosure statement, report, or other document required by the Political Reform Act to their website within 72 hours of the applicable filing deadline with specific information on each filing redacted for privacy. The City Clerk's Office currently accepts paper filings of such documents and, since January 2021, has been manually redacting and uploading forms to the City's website. The documents are to be made available online for four years from the date of the election associated with the filing.

Government Code Section 84615 provides for local government agencies to allow an elected or appointed official, candidate, or committee to file FPPC campaign statements, reports, or other documents electronically with a local filing officer through the adoption of an ordinance.

The SEI component of NetFile did not require an ordinance and was simply an internal procedural change. In order for the City of Agoura Hills to accept electronically filed campaign disclosure statements, the City Council must adopt an ordinance (Attachment 1) approving the use of an online or electronic filing system, which shall include the legislative finding that the online or electronic system will operate securely and effectively, be at no cost to filers, be available to the public to view filings, and will not unduly burden filers.

To provide a more efficient process for campaign disclosure statement filing, the City Clerk's Office recently negotiated with NetFile to accommodate online filing to include Forms 410 (courtesy copy only; signed original needs to be mailed to the Secretary of State), 460, 470, and 497, meeting the requirements of the Secretary of State. The software, in compliance with AB 2151, will also redact and post these statements to the City's website upon filing, provide more transparency to the public, and offer an easier way for all filers to complete their required filings.

Netfile is considered the premier hosted solution for electronic filing and administration for campaign disclosure statements and SEI (Form 700) in California, serving local governments for over 24 years. In terms of security, the NetFile system is a web-based, vendor-hosted application that utilizes "industry best practices" for securing data, using the same data encryption for online filings that is used by banks for online banking. NetFile stores and backs up data at three separate locations, creating the essential safety measures and redundancy that will allow for recovery of information in the event of an emergency or disaster. The City's data will be retained for the required 10-year retention period.

Implementation of the Netfile campaign disclosure statements module will promote transparency and provide convenience for committees, individuals, and the public. It provides 24-hour filing and viewing accessibility of campaign finance information from any computer, anywhere. In certain instances, the system will also increase the accuracy of filed campaign statements by prohibiting any filings that may have, inadvertently, omitted information required under the Political Reform Act. The system is

also beneficial to the filer by providing multiple prompts to ensure timely filing, by storing previous statements for user ease when completing subsequent filings, and by permitting a single filing for multiple offices.

NetFile provides training at no additional cost and to ensure a smooth transition, both NetFile and the City Clerk will offer extensive training to all filers. Additionally, for professional treasurers that have already purchased campaign software, Netfile is able to receive uploaded data from certain types of third-party applications for electronic filing purposes.

Ordinance No. 23-474, would amend the Agoura Hills Municipal Code by adding Chapter 12 to Article 2 "Administration" to permit the use of an electronic filing system for filing and authorize electronic filings. Statements that are electronically filed will be available within 24 hours to the public, excluding the redacted information. Any forms filed in paper copy will be manually reviewed/redacted by the City Clerk and uploaded into the system and will be completed with the 72-hour requirement. The public may review an unredacted copy of any statement in the City Clerk's Office.

The City currently contracts with Netfile for the Form 700 E-Filing and Administration System. Upon introduction of the ordinance, staff requests authorization from the City Council to enter into an Agreement for Consultant Services with Netfile for the filing of electronic campaign disclosure statements (Attachment 2).

With the approval of this item, the City of Agoura Hills would join with over 200 cities and 50 counties in California currently using electronic filing systems. Staff's goal is to have the software in place for officeholders to use beginning January 2024 and for City Council candidates to use in the upcoming November 2024 election cycle.

The proposed Ordinance and agreement have been reviewed by the City Attorney and approved as to form.

FISCAL IMPACT

There is no additional fiscal impact to the City Council 2023-2024 adopted Budget as funds were appropriated for this service in the City Clerk Department's Professional Services Account 010-4125-5520.

RECOMMENDATION

Staff recommends the City Council:

- 1) Waive full reading and introduce Ordinance No. 23-474; adding Chapter 12 (Electronic Filing of Campaign Disclosure Statements and Statements of Economic Interests) to Article II (Administration) of the Agoura Hills Municipal Code, and

- 2) Approve an Agreement for Consultant Services with Netfile for a Campaign Disclosure Statement E-Filing and Administration System and authorize the City Manager to execute the agreement and any amendments, provided there is funding in the budget.

Attachments: (1) Ordinance No. 23-474
(2) Agreement for Consultant Services

ORDINANCE NO. 23-474

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, ADDING CHAPTER 12 (ELECTRONIC FILING OF CAMPAIGN DISCLOSURE STATEMENTS AND STATEMENTS OF ECONOMIC INTERESTS) TO ARTICLE II (ADMINISTRATION) OF THE AGOURA HILLS MUNICIPAL CODE

WHEREAS, California Government Code Section 84615 currently provides that a local agency may adopt an ordinance to require an elected officer, candidate, committee, or other person required to file statements, reports, forms, or other documents required by Chapter 4 of the Political Reform Act (commencing with Section 84100 of the Government Code), except an elected officer, candidate, committee, or other person whose contributions and expenditures each total less than \$2,000 in a calendar year, to file such statements, reports, or other documents online or electronically with the City Clerk; and

WHEREAS, California Government Code Section 84616 provides that within seventy-two (72) hours of each applicable filing deadline, a local government agency shall post on its website a copy of any statement, report, form, or other document required by Chapter 4 (commencing with Section 84100) that is filed with that agency in paper format; and

WHEREAS, the City will enter into an agreement with a vendor approved by the California Secretary of State, to provide an online electronic filing system ("System") for Campaign Disclosure Statements and Statements of Economic Interests forms; and

WHEREAS, the System will operate securely and effectively and will not unduly burden filers. Specifically: (1) the System will ensure the integrity of the data and includes safeguards against efforts to tamper with, manipulate, alter, or subvert the data; (2) the System will only accept a filing in the standardized record format developed by the Secretary of State and compatible with the Secretary of State's system for receiving an online or electronic filing; and (3) the System will be available free of charge to filers and to the public for viewing filings; and

WHEREAS, the City of Agoura Hills desires to amend Article II (Administration) of the Agoura Hills Municipal Code to add a new Chapter 12 relating to Campaign Disclosure Statements and Statements of Economic Interests forms.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AGOURA HILLS DOES ORDAIN AS FOLLOWS:

SECTION 1. Article II (Administration) of the Agoura Hills Municipal Code is hereby amended to add a new Chapter 12 (Electronic Filing of Campaign Disclosure Statements and Statements of Economic Interests) to read as follows:

“Chapter 12. ELECTRONIC FILING OF CAMPAIGN DISCLOSURE STATEMENTS AND STATEMENTS OF ECONOMIC INTERESTS.

- 21200. Use of Electronic Filing System.
- 21201. Paper Filing Not Required After Electronic Filing.
- 21202. Filing Options When a Copy Must be Filed With City Clerk.
- 21203. Electronic Confirmation.
- 21204. Paper Filing When Cannot File Electronically.
- 21205. Internet Posting of Data.
- 21206. Records Retention.
- 21207. Administrative Policies and Procedures.

21200. Use of Electronic Filing System.

(a) Any elected officer, candidate, committee or other person required to file specified statements, reports, forms, or other documents with the City Clerk as required by Chapter 4 (commencing with Section 84100 of Title 9 of the California Government Code, also known as the Political Reform Act) that has received contributions or made expenditures of \$2,000 or more in a calendar year, shall electronically file such statements, reports, forms or other documents online or electronically with the City Clerk.

(b) Any person holding a position listed in Government Code Section 87200 or designated in the City's local conflict of interest code adopted pursuant to Government Code Section 87300, shall file any required Statement of Economic Interests reports (Form 700) online or electronically with the City Clerk.

21201. Paper Filing Not Required After Electronic Filing.

Any elected officer, candidate, committee, or other person who has electronically filed a statement, report, form, or other document using the City's online system is not also required to file a copy of that document in paper format with the City Clerk.

21202. Filing Options When a Copy Must be Filed With City Clerk.

In any instance in which an original statement, report, form, or other document must be filed with the California Secretary of State or other agency, and a copy of that statement, report, form, or other document is required to be filed with the City Clerk, the filer may electronically file a copy with the City Clerk, or may file in a paper format.

21203. Electronic Confirmation.

The City Clerk shall issue an electronic confirmation that notifies the filer that the statement, report, form or other document was received. The notification shall include the date and the time that the document was received and the method by

which the filer may view and print the data received by the City Clerk. The date of filing for a statement, report, form or other document filed online shall be the day that it is received by the City Clerk.

21204. Paper Filing When Cannot File Electronically.

If, for technical reasons, the City's system is not capable of accepting a particular type of statement, report, form or other document, an elected officer, candidate, committee or other person shall timely file that document in paper format with the City Clerk.

21205. Internet Posting of Data.

(a) The City Clerk shall ensure that the City's system makes all electronically filed statements, reports, forms, or other documents available on the internet free of charge and as soon as possible after receipt/deadline. The data made available on the City's webpage shall not contain the street name and building number of the persons or entity representatives listed on the electronically filed forms or any bank account number required to be disclosed by the filer. The City Clerk's office shall also make a complete, unredacted copy of the statement, report, form or other document available to the Fair Political Practices Commission for Government Code Section 87200 filers.

(b) Within seventy-two (72) hours of each applicable filing deadline, the City Clerk shall make available on the City's website a copy of any statement, report, form, or other document required by Chapter 4 (commencing with Government Code Section 84100) that is filed with the City in paper format. Providing a link on the City's website to the statement, report, form, or other document satisfies the requirements of this section.

(c) If the final day of the seventy-two (72) hour period is a Saturday, Sunday, or holiday, the period is extended to the next day that is not a Saturday, Sunday, or holiday.

21206. Records Retention.

The City Clerk's Office shall maintain records according to the City's records retention schedule and applicable State law commencing from the date filed, a secured, official version of each online or electronic statement, report, form, or other document, which shall serve as the official version of that record.

21207. Administrative Policies and Procedures.

The City Clerk is authorized to adopt such administrative policies and procedures as deemed necessary to implement this section.

SECTION 2. SEVERABILITY.

The City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

SECTION 3. EFFECTIVE DATE.

This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 4. CERTIFICATION.

The City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published at least once in the local newspaper of general circulation within the City of Agoura Hills.

PASSED, APPROVED, AND ADOPTED, this day of 2023,
by the following vote to wit:

- AYES: ()
- NOES: ()
- ABSENT: ()
- ABSTAIN: ()

Chris Anstead, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC, City Clerk

APPROVED AS TO FORM:

Candice K. Lee, City Attorney

AGREEMENT FOR CONSULTANT SERVICES
WITH THE CITY OF AGOURA HILLS

NAME OF CONSULTANT: NetFile
RESPONSIBLE PRINCIPAL OF CONSULTANT: Attn: Tom Diebert
CONSULTANT'S ADDRESS: 2707-A Aurora Court
Mariposa, CA 95338
CITY'S ADDRESS: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301
Attn: City Manager
PREPARED BY: Kimberly M. Rodrigues
COMMENCEMENT DATE: November 8, 2023
TERMINATION DATE: November 7, 2024
CONSIDERATION: Contract Price \$2,000

ADDITIONAL SERVICES *(Describe Services, Amount, and Approval):*

Date: _____ Amount: \$ _____ Authorized By: _____
(Not to Exceed 10% of Contract Price) City Manager

AGREEMENT FOR CONSULTANT SERVICES BETWEEN THE CITY OF AGOURA HILLS AND NETFILE

THIS AGREEMENT is made and effective as of November 8, 2023, between the City of Agoura Hills, a municipal corporation ("City") and NetFile ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on November 8, 2023, and shall remain and continue in effect until tasks described herein are completed, but in no event later than November 7, 2024, unless sooner terminated pursuant to the provisions of this Agreement.

SERVICES

Consultant shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

2. PERFORMANCE

In meeting its obligations under this Agreement, Consultant shall at all times faithfully and competently perform all tasks described herein in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

3. PREVAILING WAGES

A. Prevailing wages are required on all CITY agreements involving construction, design, and preconstruction phases of construction (including, but not limited to, inspection and land surveying work), and maintenance (except for janitorial or security guards) for work on CITY property.

B. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute by this Consultant from the Director of the Department of Industrial Relations. Copies may be obtained from the California Department of Industrial Relations Internet website at <http://www.dir.ca.gov>. Consultant shall provide a copy of prevailing wage rates to any staff or sub-consultant hired, and shall pay the adopted prevailing wage rates as a minimum. Consultant shall comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Consultant shall forfeit to the City, as a penalty, the sum of \$50.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this contract, by him or by any sub-consultant under him, in violation of the provisions of the Agreement..

4. PAYMENT

A. The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Any terms in Exhibit B other than the payment rates and schedule of payment are null and void. This amount shall not exceed Two Thousand Dollars and Zero Cents (\$2,000) ("Contract Price") ("Contract Price") for the initial Term of the Agreement unless additional payment is approved as provided in this Agreement.

The City Manager may approve additional work up to ten percent (10%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

B. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by the City Council and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

C. Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. For all reimbursements authorized by this Agreement, Consultant shall provide receipts on all reimbursable expenses in excess of Fifty Dollars (\$50) in such form as approved by the Director of Finance.

5. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

A. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

B. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section entitled "**PAYMENT**" herein.

6. DEFAULT OF CONSULTANT

A. The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

B. If the City Manager or his delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Consultant with written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement."

7. OWNERSHIP OF DOCUMENTS

A. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

8. INDEMNIFICATION

Consultant shall defend, indemnify, and hold the City, its officials, officers, employees, agents and independent Consultants serving in the role of City officials, and

volunteers (collectively "Indemnitees") free and harmless from any and all claims, demands, causes of action, proceedings, costs, expenses, liabilities, losses, damages or injuries, in law or equity, to property or persons, including wrongful death (collectively "Claims"), in any manner arising out of or incident to any acts or omissions of Consultant, its officials, officers, employees, agents or sub-consultants in connection with the performance of this Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses, except for such Claims arising out of the sole negligence or willful misconduct of the Indemnitees. With respect to any and all such Claims, Consultant shall defend Indemnitees at Consultant's own cost, expense, and risk and shall pay and satisfy any judgment, award, or decree that may be rendered against Indemnitees. Consultant shall reimburse Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant or Indemnitees. All duties of Consultant under this Section shall survive termination of this Agreement.

9. INSURANCE REQUIREMENTS

Prior to commencement of work, Consultant shall procure, provide, and maintain, at Consultant's own expense, for the duration of this Agreement, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88, or equivalent.

2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92, or equivalent, covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.

4) Cyber Security and Privacy Liability shall be written on a policy form providing cyber security and privacy liability.

5) Cyber Technology Errors and Omissions shall be written on a policy providing cyber technology errors and omissions.

B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage for all activities of the Consultant arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rental vehicles.

3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.

4) Cyber Security and Privacy Liability coverage: Consultant shall procure and maintain insurance with limits of \$1,000,000 per occurrence/loss, \$1,000,000 general aggregate, which shall include the following coverage:

- a. Liability arising from the theft, dissemination and/or use of confidential or personally identifiable information; including, but not limited to personally identifiable information (PII), protected health information (PHI), security codes, access codes, passwords, etc.
- b. Network security liability arising from the unauthorized use of, access to, or tampering with computer systems, including hacker or denial of service attacks.
- c. Liability arising from introducing a computer virus into or otherwise causing damage to vendor's (first-party) or customer's (third party) computer, computer system, network, or similarly related property and the data, software, and programs.
- d. Liability arising from professional misconduct or lack of the requisite skill required for performing services defined in the contract or agreement.
- e. Costs associated with restoring, updating, or replacing data.
- f. Costs associated with a privacy breach, including notification costs, customer support, forensics, crises management, public relations consulting, legal services of a privacy attorney, credit monitoring, and identity fraud resolutions services for affected individuals.

- g. If coverage is maintained on a claims-made basis, Consultant shall maintain such coverage for an additional three (3) years following termination of the contract.

5) Cyber Technology Errors and Omissions. Consultant shall procure and maintain insurance with limits of \$1,000,000 per occurrence/loss, \$2,000,000 general aggregate, which shall include the following coverage:

- a. Liability arising from the unauthorized release of information for which an entity has the legal obligation to keep private, such as personally identifiable information (PII) and protected health information (PHI)
- b. Network security liability arising from the unauthorized use of, access to, or tampering with computer systems, including hacker or denial of service attacks.
- c. Liability arising from the failure of technology products (software and hardware) required under the contract for Consultant to properly perform the intended services.
- d. Claims alleging the failure of computer security that result in the transmission of malicious code, deletion, destruction or alteration of data, or the denial of service.
- e. Electronic Media Liability arising from personal injury, plagiarism or misappropriation of ideas, domain name infringement or improper deep-linking or framing, and infringement or violation of intellectual property rights.
- f. Liability arising from the rendering, or failure to render, professional services.
- g. Defense costs in regulatory proceedings (state and federal) involving a violation of privacy laws or intellectual property rights.
- h. Crisis management and other expert services.
- i. If coverage is maintained on a claims-made basis, Consultant shall maintain such coverage for an additional three (3) years following termination of the contract.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Vendor maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Vendor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

E. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1) The City, its officers, officials, employees and volunteers are to be covered and named as additional insureds in respect to: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

4) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City. Consultant agrees to oblige its insurance agent or broker and insurers to provide City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City. Self-insurance shall not be considered to comply with these insurance requirements.

G. Verification of Coverage. **Consultant shall furnish the City with original endorsements, specifically naming the City of Agoura Hills, its officers, officials, employees and volunteers as additional insured, effecting coverage required by this clause.** The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms acceptable to the City. Insurance certificates and endorsements must be received and approved by City's Risk Manager prior to commencement of performance. Current insurance certificates and endorsements shall be kept on file with the City at all times during the term of this agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

H. Mailing Instructions. Insurance documents shall be mailed with the signed Agreement to the attention of the staff person indicated on the cover sheet of this Agreement, to the City of Agoura Hills, 30001 Ladyface Court, Agoura Hills, CA 91301. Executed Agreement(s) cannot be released nor may any work commence on a project until the signed Agreement and appropriate insurance documents are on file with the City Clerk.

10. INDEPENDENT CONSULTANT

A. Consultant is and shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services and tasks under this Agreement on behalf of Consultant shall not be City employees and shall at all times be under Consultant's exclusive direction and control. Consultant and all of Consultant's personnel shall possess the qualifications, permits, and licenses required by state and local law to perform the services and tasks under this Agreement, including, without limitation, a City business license as required by the Agoura Hills Municipal Code. Consultant shall determine the means, methods, and details by which Consultant's personnel will perform the services and tasks. Consultant shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the services and tasks, and compliance with the customary professional standards. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents.

B. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of City. Consultant and Consultant's personnel shall not supervise any of City's employees; and City's employees shall not supervise Consultant's personnel. Consultant's personnel shall not wear or display any City uniform, badge, identification number, or other information identifying such individual as a City employee; and Consultant's personnel shall not use any City e-mail address or City telephone number in the performance of any of the services and tasks under this Agreement. Consultant shall acquire and maintain at its sole cost and expense such vehicles, equipment, and supplies as Consultant's personnel require to perform any of the services and tasks required by this Agreement. Consultant shall perform all services and tasks off of City premises at locations of Consultant's choice, except as otherwise may from time to time be necessary in order for Consultant's personnel to receive projects from City, review plans on file at City, pick up or deliver any work product related to Consultant's performance of any services and tasks under this Agreement, or as may be necessary to inspect or visit City

locations and/or private property to perform the services and tasks. City may make a computer available to Consultant from time to time for Consultant's personnel to obtain information about, or to check on, the status of projects pertaining to the services and tasks performed under this Agreement. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

C. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services and tasks hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services and tasks hereunder. Consultant shall be responsible for and pay all salaries, wages, benefits and other amounts due to Consultant's personnel in connection with their performance of the services and tasks under this Agreement, and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to, Social Security taxes, other retirement or pension benefits, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Notwithstanding any other agency, state, or federal policy, rule, regulation, statute, or ordinance to the contrary, Consultant and any of its officers, employees, agents, and subcontractors providing any of the services and tasks under this Agreement shall not become entitled to, and hereby waive any claims to, any wages, salaries, compensation, benefit, or any incident of employment by City, including, but not limited to, eligibility to enroll in, or reinstate to membership in, the California Public Employees Retirement System ("PERS") as a City employee, and entitlement to any contribution to be paid by City for employer contributions or employee contributions for PERS benefits.

D. Consultant shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from, caused by, or relating to Consultant's personnel practices, or to the extent arising from, caused by, or relating to the violation of any of the provisions of this Section. In addition to all other remedies available under law, City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section. This duty of indemnification is in addition to Consultant's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

11. PERS COMPLIANCE AND INDEMNIFICATION

A. General Requirements. The parties acknowledge that City is a local agency member of PERS, and as such has certain pension reporting and contribution obligations to PERS on behalf of qualifying employees. Consultant agrees that, in providing its employees and any other personnel to City to perform the services and tasks under this Agreement, Consultant shall assure compliance with the Public Employees' Retirement Law, commencing at Government Code Section 20000, the regulations of PERS, and the Public Employees' Pension Reform Act of 2013, as amended. Without

limitation to the foregoing, Consultant shall assure compliance with regard to personnel who have active or inactive membership in PERS and to those who are retired annuitants and in performing this Agreement shall not assign or utilize any of its personnel in a manner that will cause City to be in violation of the applicable retirement laws and regulations.

B. Indemnification. Consultant shall defend (with legal counsel approved by City, whose approval shall not be unreasonably withheld), indemnify, and hold harmless City, and its City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from, caused by, or relating to Consultant's violation of any provisions of this Section. This duty of indemnification is in addition to Consultant's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

12. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

13. RELEASE OF INFORMATION

A. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or sub-consultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

14. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by: (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California 91301
Attention: City Manager

To Consultant: NetFile
Attn: Tom Diebert
2707-A Aurora Court
Mariposa, CA 95338

15. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

16. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

17. GOVERNING LAW

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Agoura Hills. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

18. PROHIBITED INTEREST

No officer, or employee of the City of Agoura Hills shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Consultant, or Consultant's sub-consultants for this project, during his/her tenure or for one year thereafter. The Consultant hereby warrants and represents to the City that no officer or employee of the City of Agoura Hills has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Consultant or Consultant's sub-consultants on this project. Consultant further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

19. EXHIBITS

Exhibits A and B constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

22. COUNTERPARTS

This Agreement may be executed in counterparts, all such executed counterparts shall constitute the same agreement, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF AGOURA HILLS

Nathan Hambuger,
City Manager

ATTEST:

Kimberly M. Rodrigues, MMC
City Clerk

APPROVED AS TO FORM:

Candice K. Lee
City Attorney

CONSULTANT

NetFile
Attn: Tom Diebert
2707-A Aurora Court
Mariposa, CA 95338
Telephone: (209) 742-4100
Facsimile: (209) 391-2200

By: David Montgomery
Name: David Montgomery
Title: CEO

By: Tom Diebert
Name: Tom Diebert
Title: VP & CFO

[Signatures of Two Corporate Officers Required]

EXHIBIT A

TASKS TO BE PERFORMED

The specific elements (scope of work) of this service include:

(See attached)

EXHIBIT A

SCOPE OF SERVICES

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

(a) For Filers Using the Internet:

- i. Allows the User 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 User'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 Statement of Economic Interest 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 User:

- i. Allows tracking of Filers and all electronically filed forms in a database.
- ii. Allows User to scan hard copy filings and post to the online searchable database provided a liability waiver is signed by the User 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, accessible by the public, will have all street addresses and bank account information, if applicable, blocked from view.

(d) 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 User 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 User 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.
- 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 User 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 User 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 User, will be the sole property of NetFile. If NetFile were to cease operations during the contractual period, NetFile would provide to the User all source code relative to the User's system.

B. Performance Standards

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

NetFile servers have a guaranteed uptime of 99%.

-Support

-Unlimited e-mail support for User Staff with guaranteed 1 working day turnaround

-Unlimited telephone support for User Staff during normal business hours of M-F 9:00 am to 5 pm.

-E-mail based filer help with guaranteed 3 working day turnaround

EXHIBIT B
PAYMENT RATES AND SCHEDULE



NetFile
P.O. Box 27320
Fresno, CA 93729

PHONE (209) 742-4100
FAX (209) 391-2200

INVOICE

CLIENT

City of Agoura Hills
Attn: City Clerk
30001 Ladyface Court
Agoura Hills, CA 91301

| INVOICE NUMBER | | INVOICE DATE | |
|--|--|-------------------|--|
| 9012 | | 10/18/2023 | |
| Annual Subscription Charges for Agency Services (Campaign system) 11/22/22 - 11/22/23 | | 2,000.00 | |
| TOTAL | | \$2,000.00 | |

COMMENTS: Due net 30 days

**REMIT TO ADDRESS IF
PAYING VIA CHECK:
NetFile, Inc.
PO Box 27320
Fresno, CA 93729**