

AGREEMENT WITH NETFILE TO PROVIDE ONLINE SUBSCRIPTION SERVICES FOR FPPC FILING

This agreement for the performance of services (“Agreement”) is made and entered into on this 1st day of August, 2022 (“Effective Date”), by and between NetFile, a California corporation, with its principal place of business located at 2707 Aurora Road, Mariposa, California 95338 (“Contractor”), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (hereinafter “City”), with its principal place of business located at 20 Civic Center Plaza, Santa Ana, CA 92701. 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

City employs Contractor to perform the services (“Services”) more fully described in Exhibit A entitled, SCOPE OF SERVICES. Exhibit A is attached and incorporated by this reference. Except as otherwise specified in this Agreement, 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.

2. TERM OF AGREEMENT

The term of this Agreement shall commence on the date first written above expiring end of day July 31, 2025, unless terminated earlier in accordance with Section 24 of this Agreement. The term of this Agreement may be extended for a two (2) year period upon a writing executed by the City Manager and City Attorney. The fee for this service is listed in Section 3, “Compensation and Payment” of this Agreement.

3. COMPENSATION AND PAYMENT

Contractor will provide the use of the Campaign Disclosure System and Statement of Economic Interests system (up to 350 SEI filers) at an ongoing discounted rate of \$19,000 per year commencing August 1, 2022. The total amount to be expended during the term of this Agreement shall not exceed \$95,000 (**“Total Compensation”**).

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 forty-five (45) 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.

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.

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

This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Contractor performs the services which are the subject matter of this Agreement. Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights, however, to manage its employees in their performance of Services under this Agreement. Contractor is not authorized to bind City to any contracts or other obligations.

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 as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, 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 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

Provider shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, gender expression, gender, medical conditions, genetic information, or military and veteran status, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, teaching, training, utilization, promotion, termination or other employment related activities or any services provided under this Agreement. Provider affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

14. CONTRACTOR TO HOLD CITY HARMLESS

Subject to the limitations set forth in Exhibit A (SCOPE OF SERVICES) Section F (LIMITATION OF LIABILITY), Contractor agrees to indemnify, protect, defend, and hold harmless the City, its City Council, officers and employees from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim, arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the performance of the Services by Contractor, its agents, subcontractors and/or assigns under this Agreement.

15. INSURANCE REQUIREMENTS

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.

16. AMENDMENTS

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

17. 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.

18. 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.

19. LAW GOVERNING CONTRACT

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

20. 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, 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 Orange County Superior Court shall 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 the mediation procedure has failed to resolve a dispute between the Parties may one or both of the Parties file suit in the appropriate civil court.

21. VENUE

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

22. ELECTION OF REMEDIES

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

23. CONFLICT OF INTERESTS

This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

24. TERMINATION OF THE AGREEMENT

a. This Agreement may be terminated by the City upon forty-five (45) days written notice of termination. In such event, Consultant shall be entitled to receive and the City shall pay Consultant compensation for all services performed by Consultant prior to receipt of such notice of termination, subject to the following conditions:

- i. As a condition of such payment, the Executive Director may require Consultant to deliver to the City all work product(s) completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and Consultant consents to the City's use thereof for such purposes as the City deems appropriate.
- ii. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

b. 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.

c. 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 21 working days of notification of termination.

d. 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.

25. NOTICES

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

Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92701
Fax: 714-647-6956

And to Contractor addressed as follows:

NetFile
2707 Aurora Road
Mariposa, CA 95338
Facsimile at (209) 391-2200

26. 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.

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, 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.

27. 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.

28. 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.

29. 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.

30. MISCELLANEOUS PROVISIONS

- a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and

attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

- b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.
- c. This Agreement and counterparts of this Agreement may be executed and delivered by facsimile or other electronic means by any of the parties to this Agreement. The facsimile, email, or other electronically delivered signatures of the parties shall be deemed to constitute original signatures.

[signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

CITY OF SANTA ANA

Clerk of the Council

Kristine Ridge
City Manager

CONTRACTOR
NETFILE INC.

By: Tom Diebert
TOM DIEBERT
Vice President
Netfile Inc.
2707 Aurora Road
Mariposa, CA 95338
Telephone: (209) 742-4100

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

By: Laura A. Rossini
Laura A. Rossini
Chief Assistant City Attorney

EXHIBIT A

SCOPE OF SERVICES

A. Expected Outcome

NetFile will maintain a system that permits the City of Santa Ana ("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 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 continue to 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 Clerk.

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

- Issue an ID number and password for Filers.
- Grant different user access and security levels for City staff.
- Store and edit general information about Filers.
- Store and edit all filings by individual statement periods where applicable.
- 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%.

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.

EXHIBIT B

INSURANCE COVERAGE REQUIREMENTS

Netfile shall procure and maintain insurance, for the duration of the Agreement, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Netfile, its agents, representatives, employees or subcontractors.

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Professional Liability (Errors and Omissions)** Insurance appropriate to Netfile’s profession, with limit no less than **\$1,000,000** per occurrence or claim.

If the Netfile maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Netfile. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with

respect to liability arising out of work or operations performed by or on behalf of Netfile including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Netfile's insurance (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, Netfile's **insurance coverage shall be primary** insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Netfile's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the City.**

Waiver of Subrogation

Netfile hereby grants to City a waiver of any right to subrogation which any insurer of Netfile may acquire against the City by virtue of the payment of any loss under such insurance. Netfile agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. The City may require Netfile to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current

A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract of work.*
3. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, Netfile must purchase “extended reporting” coverage for a minimum of *five (5) years after completion of contract work.*

Verification of Coverage

Netfile shall furnish City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive Netfile’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Netfile shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Netfile shall ensure that City is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.