RESOLUTION - ACTION REQUESTED 2020-95

MEETING: February 25, 2020

TO: The Board of Supervisors

FROM: Keith Williams, Treasurer/Tax Collector

RE: Net File

RECOMMENDATION AND JUSTIFICATION:
Approve an agreement with NetFile in the Amount of $3000 for the Form 700 E-Filing & Administration System (hosted); and Authorize the Board Chair to Sign the Agreement.

The NetFile Form 700 E-Filing system is an online program that will bring the same type of automation that is currently used by the FPPC for the Code 87200 filers such as Board members and the Treasurer to all required filers. It will assist in the Bi-annual updates and will be used by the County Clerk, Human Resources, and Department Heads or a designee.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board has previously approved systems to improve departmental efficiencies.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve the item and continue to manually process Form 700 filings.

FINANCIAL IMPACT:
Budgeted for Fiscal Year 2019/2020

ATTACHMENTS:
Net File Agreement (PDF)

RESULT: ADOPTED [UNANIMOUS]
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Merlin Jones, District II Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
<table>
<thead>
<tr>
<th>System</th>
<th>Cost per System</th>
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<tbody>
<tr>
<td>Form 700 E-Filing &amp; Administration System (hosted)</td>
<td>$3,000/year ongoing</td>
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<tr>
<td>For approximately 250 filers</td>
<td></td>
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<tr>
<td>Start Date for above systems: 3/1/2020</td>
<td>Due net 30 days from invoice</td>
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<td>Initial term: 5 years</td>
<td>System is invoiced in advance</td>
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**Features of NetFile Systems**

- Hosted platform provided by NetFile
- 24/7/365 access for filers and public to use
- Admin application to manage filers and filings
- Filer application for filers to create and file filings
- Public viewing portal
- Includes Ethics and Sexual Harassment training tracking
- Unlimited support and training to User
- E-mail based support to filers
- Complies with CA State Law regarding paperless filing
- NetFile pays for initial $1,000 FPPC Paperless application fee.

**USER AGREES TO PAY NETFILE FOR SERVICES IDENTIFIED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT. AGREEMENT TERM IS STARTING ON THE DATE IDENTIFIED ABOVE. YOU ACKNOWLEDGE RECEIPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND ACKNOWLEDGE THAT THE AGREEMENT IS NOT BINDING ON NETFILE UNTIL SIGNED BY BOTH PARTIES.**

**AUTHORIZED**

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<th>NetFile, Inc.</th>
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<td>PRINT NAME</td>
<td>Kevin Cano</td>
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APPROVED AS TO FORM:

STEVEN W. DAHIEM
COUNTY COUNSEL
Service Agreement Terms and Conditions

1. This Agreement provides to User a hosted electronic filing and administration system developed and maintained by NetFile. The system permits filers authorized by User to electronically file their respective FPPC forms. The FPPC forms that are electronically filed are dependent upon which system(s) that User agrees to pay for. If the User agrees to pay for the Form 700 E-Filing and Administration System, their filers will be able to create and electronically file FPPC Form 700 statements. The Form 700 system is covered by NetFile’s unlimited support and training policy. All NetFile systems come with a public viewing portal that automatically displays filings online in redacted form. The Form 700 e-filing system meets the requirements of AB 2062 for paperless filing in CA. The system allows for paper filed documents to be stored as an unredacted document and uploaded (when redacted by User) to view on the public portal. NetFile pays for User’s FPPC application fees.

2. It is the responsibility of NetFile to securely store User data and maintain backups using industry best practices. All data created by User or User’s filers is the property of the User. All applications and their source code are the property of NetFile. It is the responsibility of NetFile to provide secure and safe system access for both User and the User’s filers using industry best practices. NetFile’s systems are guaranteed to have 99% uptime. Any planned maintenance of NetFile systems will be communicated at least a week in advance of the maintenance occurring.

3. NetFile 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 set forth in this Service Agreement, 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 NetFile.

4. NetFile further warrants that (i) the NetFile servers will be free of any Harmful Code (as defined below), and (ii) NetFile will not interfere with or disrupt User or the User’s filers use of the System. 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-replicating and self-propagating programming instructions commonly called “viruses,” “Trojan horses” and “worms.” NetFile agrees to implement reasonable procedures adequate to prevent any software, link or code provided to User hereunder from being contaminated with Harmful Code. If NetFile learns of or suspects the existence of any Harmful Code, NetFile will immediately notify User and make every effort to remove the Harmful Code.

5. NetFile shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers. NetFile shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. NetFile understands and agrees that violation of this clause shall be considered a material breach of the Service Agreement and may result in Service Agreement termination.

6. Subject to the limitations set forth in Section 7 below, NetFile agrees to indemnify, protect, defend, and hold harmless the User, and its employees and filers 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 NetFile’s negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the performance of the Services by NetFile, its agents, subcontractors and/or assigns under this Service Agreement.

7. The maximum liability to the User by NetFile and its licensors, if any, under this Service Agreement, or arising out of any claim by the User 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 User 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 User 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, the limits of liability to the User by NetFile shall not be less than the amount of applicable, valid, and collective insurance set forth in this Agreement.

8. During the term of this Service Agreement, NetFile shall purchase and maintain in full force and effect, at no cost to User insurance policies with respect to employees assigned to the performance of services under this Service Agreement with coverage amounts as follows: Commercial General Liability Insurance of $1,000,000 each occurrence, $1,000,000 general aggregate, $1,000,000 personal injury; Workers’ Compensation Insurance of ($1,000,000) policy limit; Illness/Injury by disease, and ($1,000,000) for each Accident/Bodily Injury.

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

10. Either User or NetFile may terminate this Service Agreement without cause by giving the other Party written notice (“Notice of Termination”) which clearly expresses that Party’s intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, NetFile shall discontinue further services as of the effective date of termination, and User shall pay NetFile for all Services satisfactorily performed up to such date. Upon termination, NetFile will provide a copy of all data created by User within 10 working days of effective termination date.

11. User accepts any and all liability resulting from the placement of documents scanned by the User that are made available on the Internet for public viewing through the services of NetFile. In no event does NetFile accept liability created by any document scanned into the system by the User.

12. Except as otherwise indicated herein, this Agreement is non-cancellable and will commence on the start date and remain in effect throughout the Term as stated on the signature page. Any extension will be billed in the same manner as set forth herein.

13. This Agreement shall be governed in accordance with the laws of the State of California, and the Parties submit to the jurisdiction of said state. This Agreement contains the entire agreement and understanding of the parties with respect to Service, Maintenance and Support. There are no representations, inducements, promises or agreements, oral or otherwise, not embodied herein or also embodied in any attached agreement. Any and all prior discussions, negotiations, commitments and understandings relating to Service, Maintenance or Support are merged herein.