

**CONTINUATION AND FOURTH AMENDMENT TO AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
BATEMAN COMMUNITY LIVING, LLC DBA TRIO COMMUNITY MEALS
BY AND THROUGH ITS BATEMAN DIVISION
FOR SENIOR NUTRITION SERVICES AT MULTIPLE CITY OWNED
COMMUNITY CENTERS**

This CONTINUATION AND FOURTH AMENDMENT to Agreement is entered into this 23rd day of Febrauy, 2022, by the CITY OF SAN JOSE (“CITY”), a municipal corporation, and BATEMAN COMMUNITY LIVING, LLC DBA TRIO COMMUNITY MEALS. a Delaware corporation authorized to do business in the State of California (“CONTRACTOR”).

RECITALS

WHEREAS, on June 5, 2018, CITY and CONTRACTOR entered into an Agreement entitled “AGREEMENT BETWEEN THE CITY OF SAN JOSE AND BATEMAN COMMUNITY LIVING LLC, INC. FOR SENIOR NUTRITION SERVICES AT MULTIPLE CITY OWNED COMMUNITY CENTERS (“AGREEMENT”); and

WHEREAS, on March 18, 2019, CITY and CONTRACTOR entered into a First Amendment to the Agreement to decrease the amount of total compensation allowed;

WHEREAS, on August 7, 2019, CITY and CONTRACTOR entered into a Second Amendment to the Agreement to increase the amount of total compensation allowed

WHEREAS, on August 24, 2020, CITY and CONTRACTOR entered into a Third Amendment to the Agreement to increase the amount of total compensation

WHEREAS, the Parties now seek to extend the term for one (1) year (“Extension Term”) and increase the amount of total compensation allowed from \$2,903,844 to \$3,288,516.21;

NOW, THEREFORE, the parties agree to amend the AGREEMENT as follows:

SECTION 1. Exhibit A, "SCOPE OF SERVICE" is amended to read as shown in REVISED EXHIBIT A, attached and incorporated into this Fourth Amendment.

SECTION 2. "TERM OF AGREEMENT" is amended to exercise the fourth of five (5) additional terms for one (1) year ("Extension Term") until June 30, 2022;


SECTION 3. All the terms and conditions of the original AGREEMENT not modified by this FOURTH AMENDMENT shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

"City"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation



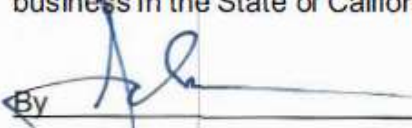
AARON YU
Deputy City Attorney

By *Sarah Zarate*

SARAH ZARATE
Director, Office of the City Manager

"Contractor"

BATEMAN COMMUNITY LIVING, LLC
DBA TRIO COMMUNITY MEALS, a
Delaware corporation authorized to do
business in the State of California.

By 

Name: John Kirk
Title: Managing Director

REVISED EXHIBIT A
SCOPE OF SERVICES

Contractor will provide nutritional meal services to San Jose seniors age 60 and older at up to fourteen (14) Community Center sites and in the (10) City Council Districts within the City of San Jose. Contractor will prepare hot meals on-site, unless specified in Table 1 of Exhibit A and adhere to the requirements in the County of Santa Clara’s Senior Nutrition Program (SNP) Policy Manual

1. Eligible Individuals

- Persons who are 60 years of age or older who are spouses of persons who are 60 years of age or older; and
- Handicapped or disabled individuals who have not attained 60 years of age but reside in housing facilities occupied primarily by the elderly at which congregate nutrition services are provided, or individuals with disabilities who reside at home with and accompany older individuals who are eligible for services; and
- Priority will be given to those older persons in greatest economic or greatest social need as defined by the Older Americans Act of 1965 as amended.

2. Meals

- Meals served by Contractor must provide at least one-third of the current recommended dietary allowance specified by the Food and Nutrition Board of the National Academy of Science – National Research Council.
- Menus will be planned by Contractor in cycles, the minimum period being four (4) weeks. Menus will be planned in accordance with County requirements and submitted to City three weeks prior to initial use.
- Contractor will be responsible for ensuring that menus will include the following items:
 - Seasonal fresh vitamin rich vegetables three (3) times per week
 - Seasonal fresh fruit three (3) times per week
 - Soups two (2) times per week
 - Daily alternative nutritious vegetarian meals
 - Daily alternative meat meals
- Menus will be posted in a conspicuous location at meal sites at least one (1) week in advance.
- Table settings will be of reasonable quality. If disposable dinnerware used, it will be of sturdy quality.
- Lunch will be served no later than 12:00 PM each day and will be available for a 30-minute window time.
- Contractor may not use donated foods for meal preparation or meal service
- Meal substitutions:
 - Meals shall be served as indicated on approved menus

- Menu substitution should be minimized and limited to the guidelines as outlined in the County of Santa Clara’s SNP Policy Manual
- Menu substitutions shall be received and approved by SNP assigned registered dietitian in accordance with Menu Planning Guidelines
- Document substituted menu item(s) onto menu

3. Special Meals

- Contractor will provide themed meals at no additional cost. These enhanced meals will be in collaboration with each site manager and offered quarterly. The meals can focus on holidays or other special community interest days.

4. Nutrition Sites

Table 1

Council District	Site	Address	Serving Model
1	Cypress	403 S. Cypress Avenue, 95117	Cook on site
2	Southside	5585 Cottle Rd, 95123	Cook on site
3	Gardner	520 W. Virginia St., 95125	Cook on site
3	Northside	488 N. 6 th Street., 95112	Cook on site
3	Roosevelt	901 E. Santa Clara St., 95116	Cook on site
4	Alviso	5050 N. 1 st Street, 95116	Catered
4	Berryessa	3050 Berryessa Avenue, 95132	Cook on site
5	Mayfair	2039 Kammerer Ave., 95116	Cook on site
6	Willow Glen	2175 Lincoln Avenue., 95125	Cook on site
7	Alma	136 W. Alma Ave., 95110	Cook on site
7	Seven Trees	3590 Cas Dr., 95111	Cook on site
8	Evergreen	4860 San Felipe Rd., 95135	Cook on site
9	Camden	3369 Union Ave., 95124	Catered
10	Almaden	6445 Camden Ave., 95120	Cook on site

5. Donation Policy

Contractor may request a voluntary contribution to offset costs of the meals. Suggested contribution is \$3.00 per meal and a mandatory \$9.00 guest fee for persons under 60 years of age. Contributor’s names and amounts are confidential and may not be disclosed without written permission of the contributor.

6. Menu Planning

Menus must follow the menu guidelines as described in the County of Santa Clara’s SNP Policy Manual

- a. Menus for hot meals must be submitted and completed using the component methods as described in the County of Santa Clara’s SNP Policy Manual to determine nutritional content.
- b. Moderate amounts of salt will be used in the preparation of food. Menus are to be prepared with as low in fat content as possible.
- c. Oil used in food prepared will be liquid and polyunsaturated fat and/or monosaturated fat in the preparation of all meals.
- d. Food must be attractive, palatable, and appealing.
- e. Ethnic and holiday menus should be incorporated under advisement by the County Nutrition Services Manager or Staff Dietitians.
- f. Contractor will participate in biannual focus group and/or survey distribution exercises to solicit feedback regarding desired food items at each of the 14 Senior Nutrition Program sites.

7. Food Inventory

1. Contractor must provide City with a written plan for conducting food inventories upon request which includes the following information:
 - a. Procedures for conducting food inventories and a schedule for completing inventories for the term of the contract.
 - b. A description of “First-in-First-Out” food rotation system to ensure stored goods are rotated to prevent deterioration

8. Staffing Model

Meal Site	Position	Hours per Day	Meal Site	Position	Hours per Day
Alma	Site Super	4.00	Mayfair	Site Super	4.00
Alma	Cook	8.00	Mayfair	Cook	8.00
Almaden	Site Super	4.00	Northside	Site Super	4.00
Almaden	Cook	8.00	Northside	FSW	4.00
Berryessa	Site Super	4.00	Northside	Cook	8.00
Berryessa	Cook	8.00	Roosevelt	Site Super	4.00
Berryessa	FSW	4.00	Roosevelt	FSW	4.00
Camden	Site Super	4.00	Roosevelt	Cook	8.00
Cypress	Site Super	4.00	Seven Trees	Site Super	8.00
Cypress	Cook	8.00	Seven Trees	Cook	4.00
Driver/Sub	Driver	7.00	Southside	Site Super	4.00
Evergreen	Site Super	4.00	Southside	Cook	8.00
Evergreen	FSW	4.00	Southside	FSW	4.00
Evergreen	Cook	8.00	Willow Glen	Site Super	4.00
Gardner	Site Super	4.00	Willow Glen	Cook	8.00
Gardner	Cook	8.00			

Contractor will make reasonable efforts to provide a similarly qualified replacement in case an employee does not report to work.

In addition to the above staff, Contractor will employ:

- Local dietitian, whose focus will be menu development, menu selection, recipe development and compliance.
- Production/administration manager, whose focus will be inventory control, recipe development, cook and FSW training, product selection, food quality and accounts payable.
- Hospitality manager, whose focus will be training and development, site compliance, quality and customer service.

9. Payment for Services

Contractor agrees that payment for services will be on a cost-reimbursement agreement basis, based on actual meals served and actual staffing levels up to the costs listed in Table 2 by nutrition site. A credit for lower than expected staffing levels lasting more than two (2) consecutive weeks will be applied on the monthly reimbursement form. The amount of the credit will be based on the hourly wage of the vacant position and the number of missing hours assigned to the position. Contractor will be reimbursed on a monthly basis for expenses incurred in the previous month. Contractor will submit monthly reimbursement forms with receipts by the 10th business day of the month for the month just preceding in which services are performed. Contractor will provide City with a monthly cost reimbursement form that specified the line item allocations as defined by the County Senior Nutrition Program, if necessary in order for the City to receive reimbursement under the County Contract.

Contractor’s reimbursement shall not exceed the following per meal cost provided in Table 2 below:

Table 2
PERIOD JULY 1, 2021 – JUNE 30, 2022

Council District	Site	Program Schedule	Per Meal Cost
1	Cypress	Monday-Friday	\$12.51
2	Southside	Monday-Friday	\$12.51
3	Gardner	Monday-Friday	\$12.51
3	Roosevelt	Monday-Friday & Saturday	\$12.51
3	Northside	Sunday-Thursday	\$12.51
4	Alviso	Monday & Wednesday	\$6.93
4	Berryessa	Monday-Friday	\$12.51
5	Mayfair	Monday-Friday	\$12.51

6	Willow Glen	Monday-Friday	\$12.51
7	Alma	Monday-Friday	\$12.51
7	Seven Trees	Monday-Friday	\$12.51
8	Evergreen	Monday-Friday	\$12.51
9	Camden	Monday-Friday	\$12.51
10	Almaden	Monday-Friday	\$12.51

Contractor's reimbursement shall not exceed a total of \$3,288,516.21 for the period of July 01, 2021 – June 30, 2022.

JULY 01, 2021-JUNE 30, 2022

- The compensation for July 01, 2021-June 30, 2022 shall not exceed a total of \$3,288,516.21.
- Price will be at \$12.51 per meal served
- Meals served above the agreed budgeted count of 825 daily meals will be charged at a discounted rate of \$8.30 per meal exclusive of Saturday meal counts at Roosevelt Community Center

Contractor shall not receive payment under this Agreement for any other purpose than the provision of meal services at City-owned Senior Nutrition Program sites.

After the initial one-year period, price adjustments may be considered by the City if the Contractor can demonstrate to the stratification of the City that a price increase is justifiable. Any increase shall not exceed more than 3% annually or more than the percentage change in the City's Living Wage Policy.

10. Service Tasks

- Except as specified in Section 10 below Contractor shall be responsible for the performance of all services necessary to deliver the Senior Nutrition Program, including but not limited to the following:
 - a. Collection of dining counts via telephone reservation system;
 - b. Maintenance and reporting of monthly sign in data (scanned files), client contributions, and nutrition education sessions;
 - c. Generating menus;
 - d. Generating food/cleaning supply orders and receiving shipments;
 - e. Generating monthly reports and invoices to the City and Santa Clara County;
 - f. Leaving kitchen facilities in a clean, orderly, and sanitary fashion at the end of each serving day;
 - g. Maintaining environmental and health permits;

- h. Daily preparation and serving of food (food productions), sanitation, and food safety;
 - i. Cleaning of each site in accordance with the County of Santa Clara’s SNP Policy Manual
- The following tasks shall be provided by City staff or City volunteers. City shall be responsible in assisting the recruitment and supervision of all City volunteers in coordination with Contractor’s on-site supervisor. Contractor is not responsible for those tasks to be provided by City or its volunteers including:
 - a. Collection, final count and deposit of donations;
 - b. Collection and maintenance of participant intake forms; and associated reporting;
 - c. Coordination of Outreach paratransit services and submission of associated numbers for Santa Clara County report;
 - d. Facilitating access to IT equipment as needed to conduct general senior nutrition operations;
 - e. Mass printing of menus as part of monthly brochures;
 - f. Table and chair set up per nutrition site listed on Exhibit B in the Original Agreement;
 - g. Administering fire and earthquake drills

11. Government Holidays

CONTRACTOR will observe the following holidays and will not serve meals on the following days:

Date	Holiday
Sunday – July 4, 2021	Independence Day (Observed)
Monday – July 5, 2021	Independence Day
Saturday – September 4, 2021	Labor Day (Observed)
Sunday – September 5, 2021	Labor Day (Observed)
Monday – September 6, 2021	Labor Day
Saturday – October 9, 2021	Indigenous People’s Day (Observed)
Sunday – October 10, 2021	Indigenous People’s Day (Observed)
Monday – October 11, 2021	Indigenous People’s Day
Thursday – November 11, 2021	Veterans’ Day
Thursday – November 25, 2021	Thanksgiving Day
Friday – November 26, 2021	Day after Thanksgiving
Saturday – November 27, 2021	Thanksgiving (Observed)
Thursday – December 23, 2021	*Christmas Eve
Friday – December 24, 2021	Christmas Day (Observed)
Saturday – December 25, 2021	Christmas Day
Thursday – December 30, 2021	New Year’s Day (Observed)
Friday – December 31, 2021	*New Year’s Eve
Saturday – January 1, 2022	New Year’s Day

Saturday – January 15, 2022	Martin Luther King, Jr. Day (Observed)
Sunday – January 16, 2022	Martin Luther King, Jr. Day (Observed)
Monday – January 17, 2022	Martin Luther King, Jr. Day
Saturday – February 19, 2022	President’s Day (Observed)
Sunday – February 20, 2022	President’s Day (Observed)
Monday – February 21, 2022	President’s Day
Thursday – March 31, 2022	*Cesar Chavez Day
Saturday– May 28, 2022	Memorial Day (Observed)
Sunday– May 29, 2022	Memorial Day (Observed)
Monday – May 30, 2022	Memorial Day

*Holidays not funded by the County Senior Nutrition Program

12. Performance Evaluation

Contractor will be subject to periodic performance evaluation(s) by the City to ensure that requirements of this Agreement are met. A minimum of one annual performance evaluation will be completed and provided to the Contractor. Contractor will be required to maintain an 85% customer satisfaction level. City may require Contractor to provide a corrective action plan in the event that satisfaction levels fall below 85% and City may re-evaluate Contractor satisfaction levels after 6 months of submission of corrective action plan. Nothing contained herein shall be construed to obligate City to provide Contractor with a corrective action plan or to limit or abrogate any other rights or remedies City may have under this Agreement in the event of Contractor’s failure to perform in accordance with the terms and conditions of this Agreement.

Items subject to evaluation will include but are not limited to the following:

- Customer Satisfaction Survey(s)
- Adherence to Menu Guidelines
- Food Quality and Portion Control
- Delivery performance for Meals On Wheels and Congregate Programs
- Maintenance of Temperature Standards During Production and at Delivery
 - Health and Sanitation Practices
 - Documentation and Record Keeping Practices
 - Overall Contract Compliance
 - Participation in Required Training
 - Quality Control Effort



Memorandum

TO: Sarah Zarate
Director, City Manager's Office

FROM: Jon Cicirelli
Director of Parks, Recreation
and Neighborhood Services

SUBJECT: Approval of Retroactivity

DATE: February 15, 2022

Approved

Sarah Zarate

Date

2/23/22

SUBJECT: APPROVAL OF RETROACTIVITY IN THE AGREEMENT WITH BATEMAN COMMUNITY LIVING, LLC DBA TRIO COMMUNITY MEALS

In June 2013, the City Auditor released an audit report entitled "Consulting Agreements: Better Enforcement of Procurement Rules, Monitoring, and Transparency is Needed." (City Audit Report No. 13-06.) Recommendation No. 4 (Audit Report pages 16-17) involves limiting retroactive agreements to situations where contract execution is in process. The audit report states that when a City employee informally authorizes work before execution of the agreement, the employee commits City funds not within his/her authority to commit.

The Department is seeking authorization for the retroactive provision to pay for services in the following agreement.

The justification for the requests detailed below that are to include a retroactivity provision is that the agreements were competitively procured and either:

- Its execution was already in process when the services started.
- The services responded to an *immediate* threat to public health, safety, or property.
- The manner of compensation doesn't involve a commitment of City funds.
- The consultant/contractor provided a letter stating that the City isn't obligated to pay for any services it provided if the contract/amendment isn't executed.
- Starting services protected or advanced the following significant City interest:
If this option is selected, explain the City interest and how the services protected/advanced that City interest.

February 15, 2022

Subject: APPROVAL OF RETROACTIVITY

Page 2

Bateman Community Living dba TRIO Community Meals has been providing meal distribution services to the Senior Nutrition Program at 14 Community Centers. Through the procurement conducted in 2017, this provider is eligible to provide services through on behalf of the City to provide nutritious meals to seniors Citywide. City staff have been coordinating the details of the resulting agreements and services since June. However, there have been several changes including the cost of meals, which affect the overall agreement amount. Due to fluctuation in administrative staffing, the changes were not communicated in a timely manner. As a result, the agreement is now in the final stages of department review, signature, and execution.

The Department is requesting that the following three agreements be accepted with retroactive provisions. We understand that retroactive agreements are to be avoided. We request an exception be made and the agreement detailed in this memorandum be allowed to proceed with retroactive clauses.



On behalf of

Jon Cicirelli

Director of Parks, Recreation and
Neighborhood Services

For questions, please contact Petra Rigüero, Interim Program Manager, via e-mail at petra.riguero@sanjoseca.gov.



RESOLUTION NO. 78607

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE CITY MANAGER TO: (A) NEGOTIATE AND EXECUTE AN AGREEMENT, SUBJECT TO APPROPRIATION OF FUNDS BY CITY COUNCIL, WITH BATEMAN COMMUNITY LIVING, A DIVISION OF COMPASS GROUP, TO PROVIDE CITYWIDE SENIOR NUTRITION SERVICE FOR AN INITIAL ONE-YEAR TERM THROUGH JUNE 30, 2019, WITH A MAXIMUM COMPENSATION AMOUNT NOT TO EXCEED \$2,516,000 DURING THE INITIAL TERM; AND (B) EXECUTE FIVE ONE-YEAR OPTIONS TO RENEW THE AGREEMENT, SUBJECT TO ANNUAL APPROPRIATION OF FUNDS BY CITY COUNCIL

WHEREAS, the City of San Jose's ("City") Senior Nutrition Program provides healthy congregate meal service at 13 Senior Nutrition sites, which supports County of Santa Clara dietary requirements and provides increased opportunities for socialization among seniors; and

WHEREAS, since 2011, Bateman Community Living, a division of Compass Group, Inc. ("Bateman"), has been the service provider for the Senior Nutrition Program; and

WHEREAS, on October 4, 2017, the City released a Request for Proposal to solicit Senior Nutrition Program service providers, and two proposals were received; and

WHEREAS, the City desires to negotiate and execute an agreement with Bateman, the highest ranked proposal per the evaluation criteria; and

WHEREAS, Bateman has demonstrated its commitment, as an existing provider, to continuous improvement regarding its services and its flexibility in accommodating the needs and desires of San Jose's culturally diverse senior community;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

The City Manager is hereby authorized to:

- (a) Negotiate and execute an agreement, subject to appropriation of funds by City Council, with Bateman Community Living, a division of Compass Group, to provide Citywide Senior Nutrition Service for an initial one-year term commencing on July 1, 2018 through June 30, 2019, with a maximum compensation amount not to exceed \$2,516,000 during the first twelve months of the initial term; and
- (b) Execute five one-year options to renew the agreement, subject to annual appropriation of funds by City Council.

ADOPTED this 5th day of June, 2018, by the following vote:

AYES: ARENAS, CARRASCO, DAVIS, DIEP, JONES, JIMENEZ, KHAMIS, NGUYEN, PERALEZ, ROCHA; LICCARDO.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.



SAM LICCARDO
Mayor

ATTEST: 

TONI J. TABER, CMC
City Clerk



- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: Patsy Cortez
 EMAIL: Patsy.Cortez@sanjoseca.gov

SCANNED SIGNATURE AUTHORIZATION

DATE: 02/14/2022

TO: John Kirk, Managing Director, TRIO

EMAIL: john.kirk@triocommunitymeals.com

PHONE: 601.345.7068

TOTAL PAGES:
 (INCLUDING THIS PAGE) 10

TO: _____

EMAIL: _____

PHONE: _____

I agree to use electronic signatures

I agree to use electronic signatures

BY: 

BY: _____

DIRECTIONS:

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

1. SIGN THE DOCUMENT **IN BLUE INK**
2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE **IN COLOR**
4. EMAIL THE ENTIRE DOCUMENT TO

To BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- USE OF A PASSWORD PROTECTED WEBSITE
- CONFIRMED BY A KNOWN TELEPHONE NUMBER
- PERSONALLY KNOWN TO CITY STAFF

City of San José Contract/Agreement Transmittal Form

Route Order

Attached / Completed

Electronically Signed

TO: City Attorney
 City Manager
 City Clerk **OR** Return to
Dept. (circle one)

Insurance Certificates / Waivers Electronically Signed: Yes
 Business Tax Certificate Audit Trail Attached (if applicable)
 Contacted Clerk re: Form 700 Scanned Signature Authorization
 Supplemental Memorandums (if applicable): Select One

Type of Document: New Contract

Type of Contract: Other

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 663443-004

Contractor: Bateman Community Living, LLC dba TRIO Community Meals

Address: 1675 Walsh Ave. Suite #1 Santa Clara, CA 95050

Phone: N/A

Email: lisa.jackson@triocommunitymeals.com

Contract Description: This is a continuation and fourth amendment for the FY 21-22 Senior Nutrition Meal Provider. This amendment will extend the term for one year and adjust the meal costs.

Term Start Date: 7/1/2021 Term End Date: 6/30/2022 Extension: Yes

Method of Procurement: RFP RFB, RFP or RFQ No.: N/A Date Conducted: 10/4/2017

Agenda Date (if applicable): 6/5/2018

Agenda Item No.: 2.17

Resolution No.: 78607

Ordinance No.: N/A

Original Contract Amount: 2,903,844

Amount of Increase/Decrease: 384,672.21

Option #: of Option Amount: N/A

NTE/Updated Contract Amount: 3,288,516.21

Fund/Appropriation: 001 / 0642

Form 700 Required (Selection mandatory for processing): No

Revenue Agreement: No

Tax Certificate No.: 132665907

Expiration Date: 7/15/2022

Department: PRNS (64)

Department Contact: cynthia.rosas@sanjoseca.gov
PRNScontracts@sanjoseca.gov

Customer (Finance Only): _____

Notes: PRNS Database# 646913

Retroactive

Project Manager: Cynthia Rosas cynthia.rosas@sanjoseca.gov

Department Director Signature:  On behalf of Jon Cicirelli 02/17/2022
Date

Office of the City Manager Signature: Jessica Lowry 2/23/22
Date