

**FIRST AMENDMENT TO THE MEMORANDUM OF AGREEMENT  
BETWEEN THE CITY OF SAN JOSE DEPARTMENT OF PARKS,  
RECREATION AND NEIGHBORHOOD SERVICES (PRNS)  
AND THE CITY OF SAN JOSE OFFICE OF ECONOMIC DEVELOPMENT AND  
CULTURAL AFFAIRS (OEDCA)  
FOR KIRK COMMUNITY CENTER  
AND OLD ALMADEN WINERY COMMUNITY CENTER**

This FIRST AMENDMENT is entered into this 27th day of July, 2022, between the City of San José Department of Parks, Recreation and Neighborhood Services (“PRNS”) and the City of San José Office of Economic Development and Cultural Affairs (“OEDCA”).

**RECITALS**

**WHEREAS**, on July 1, 2018, PRNS and OEDCA entered into a Memorandum of Agreement entitled “Memorandum of Understanding Between the City of San José’s Office of Economic Development, work2future Division and Department of Parks, Recreation and Neighborhood Services for the San José Works Program”; and

**WHEREAS**, PRNS and OEDCA desire to enter into a FIRST AMENDMENT to the Memorandum to remove Kirk Community Center and all rates and charges associated with use of the facility from the Memorandum; and

**NOW, THEREFORE**, the PRNS and OEDCA agree to amend the Memorandum as follows:

**SECTION 1.** Section 3, “PROPERTIES” is amended to read as follows:

OEDCA is permitted to use the following two properties for work2future’s employment and related programs:

A. Kirk Community Center: Access was granted from July 1, 2018 to January 1, 2022. Exhibit A, entitled “Kirk Community Center” is hereby deleted.

B. Old Almaden Winery Community Center is located at 5730 Chambertin Drive, San José, CA 95118 (APN 567-73-067) and is more particularly described in the attached **Exhibit B**. The two-story building located on the property is approximately 15,000 square feet in size. OEDCA work2future will utilize sixty percent of the building or the second story for operations. Use of Multipurpose Room (Boardroom) will also be made available upon written approval with PRNS.

**SECTION 2.** Section 4, “TERM” is amended to read as follows:

OEDCA’s rights to use the CENTERS shall commence on July 1, 2018 (“Commencement Date”) and continue for a period of seven (7) years, to expire on June 30, 2025 (“Expiration Date”), with the exception of Kirk Community Center, which expired on January 1, 2022. Prior to the Commencement Date, OEDCA and its contractors will be permitted access to the CENTERS for installation of tenant improvements as described in REVISED SECTION 7 below.

**SECTION 3.** Section 5, “USE FEE” is amended to read as follows:

Beginning on the Commencement Date and continuing through the term of this Memorandum, OEDCA agrees to pay to PRNS the following fees for use of the CENTERS (“Use Fee”). Maintenance, Custodial, and Utilities to be billed at the actual rate. :

<b>Kirk Community Center</b>		Annual Fee
<b>Payment of fees end on January 1, 2022</b>		
Rent	Flat	\$27,018.00
Maintenance	Variable	\$32,642.87
Custodial	Flat	\$30,627.30
Utilities	Flat	\$31,474.30
<b>Total Fee/Year</b>		<b>\$121,762.47</b>
Total Fee/Month		\$10,146.87

\* Rates based on previous OEDCA MOA July 1, 2011.

\*\*Payment of fees sent on or by January 1, 2022.

<b>Old Almaden Winery Community Center</b>		Annual Fee
Rent	Flat	\$22,077.18
Maintenance	Variable	\$17,180.45
Custodial	Flat	\$12,826
Utilities	Flat	\$24,570.00
<b>Total Fee/Year</b>		<b>\$76,653.63</b>
Total Fee/Month		\$6,387.80

\*Fees are based on actual usage or 60% of building square footage. Rates based on previous OEDCA MOA July 1, 2011. Includes second story of building and mutual use areas on the first floor including hallway, stairwell, elevator, and restrooms.

\*\*Use of Boardroom or MPR for meetings and trainings is included as part of the actual building usage. Dates and Use subject to written approval by PRNS Reuse staff.

Annual Labor Cost:

Property Management by PRNS Staff (Kirk Community Center and Almaden Winery Community Center)	\$47,000
PRNS administrative costs supporting work2future program	\$18,000
<b>Total Annual Labor Cost</b>	<b>\$65,000</b>

The annual labor cost will be amended to the below table starting January 1, 2022:

Property Management by PRNS Staff (Almaden Winery Community Center)	\$23,500
PRNS administrative costs supporting work2future program	\$18,000
<b>Total Annual Labor Cost</b>	<b>\$41,500</b>

Beginning July 1, 2018, PRNS may submit a budget modification request in writing, a budget transfer from the maintenance cost to labor costs pertaining to actual labor charges so long as the line item for maintenance costs has not been fully spent at the end of the fiscal year and so long as the total amount of compensation under this Memorandum remains unchanged.

The Use Fee will be recalculated annually to reflect the variable costs for maintenance, custodial, utilities, taxes and insurance relating to the CENTERS, with the exception Kirk Community Center after January 1, 2022. The rent portion of the Use Fee shall remain the same throughout the term of this Memorandum, with no escalation whatsoever.

**SECTION 4.** Section 6, “**USE**” is amended to read as follows:

- A) OEDCA shall have the non-exclusive right to use the CENTERS for work2future’s employment and related programs, with the exception of Kirk Community Center after January 1, 2022. Such programming may include, but is not limited to, the use of space by designated organizations at no additional cost to work2future consistent with Workforce Innovation and Opportunity Act (“WIOA”) and City Council Policy 7-12.
- B) PRNS shall have the right to lease space within the CENTERS to third party organizations that share in and further work2future’s goal of maximizing local and regional employment opportunities, as mutually agreed upon in writing between PRNS, OEDCA, and work2future with ninety (90) days’ notice. In the event the PRNS’ lease to a third party results in a reduction of the space used by OEDCA as described in SECTION 3, there will be a pro rata reduction of the Use Fee paid by OEDCA for such loss of space.

C) PRNS reserves the right to use the spaces described below:

a. Kirk Community Center.

Access and right to use the space were granted from July 1, 2018 to January 1, 2022.

a. Old Almaden Winery Community Center.

i. **Special Events and Fee Generation Activities.** PRNS reserves the non-exclusive right to use the multipurpose room, kitchen and grounds for special events and fee generation activities on specified weekends and evenings. The specific locations of the multipurpose room, kitchen and grounds are identified in **Exhibit B**.

ii. **Reservation Procedures.** PRNS will provide at least three (3) weeks prior notice to work2future staff for any PRNS reservations of space at this center. Furthermore, PRNS will ensure that all renters comply with the City's reservation policies for community centers, and that any furniture or supplies moved by PRNS or its renters during such events will be returned to their original work2future configurations/locations.

**SECTION 5.** Section 7, "**TENANT IMPROVEMENTS**" is amended to read as follows:

A. Installation and Removal of Tenant Improvements. OEDCA may install additional improvements, fixtures, furniture, and equipment within the CENTERS as reasonably necessary for the operation of the work2future programs as approved by PRNS ("Tenant Improvements"). All Tenant Improvements must be compliant with all City procurement requirements at the time of request. Any requirements more than the City's procurement requirements will be the responsibility of OEDCA. In addition, any work required outside of current building code and ADA compliance will be the responsibility of OEDCA. Upon the expiration or earlier termination of the Memorandum, OEDCA shall remove all personal property not affixed in any way to the CENTERS and shall repair any damage to the CENTERS caused by such removal, including patching and filling holes, unless otherwise approved by PRNS. In no event shall OEDCA replace walls, remove, or be required to remove any restrooms, flooring, ceilings, HVAC systems, utility or electrical components located inside the walls.

B. Signs. OEDCA may place one (1) or more work2future program signs on the exterior of the CENTERS provided that any such signs are in accordance with the City's Sign Ordinance and are designed and installed in a manner that maintains existing building system warranties. Upon expiration or earlier termination of the Memorandum, OEDCA shall remove the signs from the exterior of the CENTERS and restore the exterior of each center to its original condition, unless otherwise approved by PRNS.

C. Reimbursement in the Event of Sale. Both parties acknowledge that the City may determine in the near future to sell one or more of the CENTERS. In the event Kirk Community Center is sold, PRNS agrees to reimburse to OEDCA the actual unamortized tenant improvement costs (“Kirk TI Costs”) pursuant to this Section; and in the event Old Almaden Winery Community Center is sold, PRNS agrees to reimburse to OEDCA the actual unamortized tenant improvement costs (“Old Almaden TI Costs”) pursuant to this Section.

Any and all reimbursements shall be paid according to the following schedule effective July 1, 2018 with the exception of sale of Kirk Community Center after January 1, 2022.

<b>Kirk Community Center Reimbursement Schedule</b>		
Sale Closing Date Prior to End of Year	1 =	86% of Kirk TI Costs
Sale Closing Date Prior to End of Year	2 =	72% of Kirk TI Costs
Sale Closing Date Prior to End of Year	3 =	58% of Kirk TI Costs
Sale Closing Date Prior to End of Year	4 =	44% of Kirk TI Costs
Sale Closing Date Prior to End of Year	5 =	30% of Kirk TI Costs
Sale Closing Date Prior to End of Year	6 =	16% of Kirk TI Costs
Sale Closing Date Prior to End of Year	7 =	2% of Kirk TI Costs

<b>Old Almaden Winery Community Center Reimbursement Schedule</b>		
Sale Closing Date Prior to End of Year	1 =	86% of Old Almaden TI Costs
Sale Closing Date Prior to End of Year	2 =	72% of Old Almaden TI Costs
Sale Closing Date Prior to End of Year	3 =	58% of Old Almaden TI Costs
Sale Closing Date Prior to End of Year	4 =	44% of Old Almaden TI Costs
Sale Closing Date Prior to End of Year	5 =	30% of Old Almaden TI Costs
Sale Closing Date Prior to End of Year	6 =	16% of Old Almaden TI Costs
Sale Closing Date Prior to End of Year	7 =	2% of Old Almaden TI Costs


All of the terms and conditions of the amended Memorandum not specifically modified by this FIRST AMENDMENT shall remain in full force and effect.

**SECTION 6.** This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

**SECTION 7.** Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code

Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.

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


By:   
Jon Cicirelli  
Director, Parks, Recreation  
and Neighborhood Services

Date: 7/27/2022

By:   
Nanci Klein  
Director, Director of Economic  
Development and Cultural Affairs  
Director of Real Estate

Date: 7/20/22

APPROVED AS TO FORM:

By:   
Aaron Yu  
Deputy City Attorney

Date: 7/26/2022

NVF:AXY:AHT:PR:MV  
4/27/2022

**EXHIBIT A**

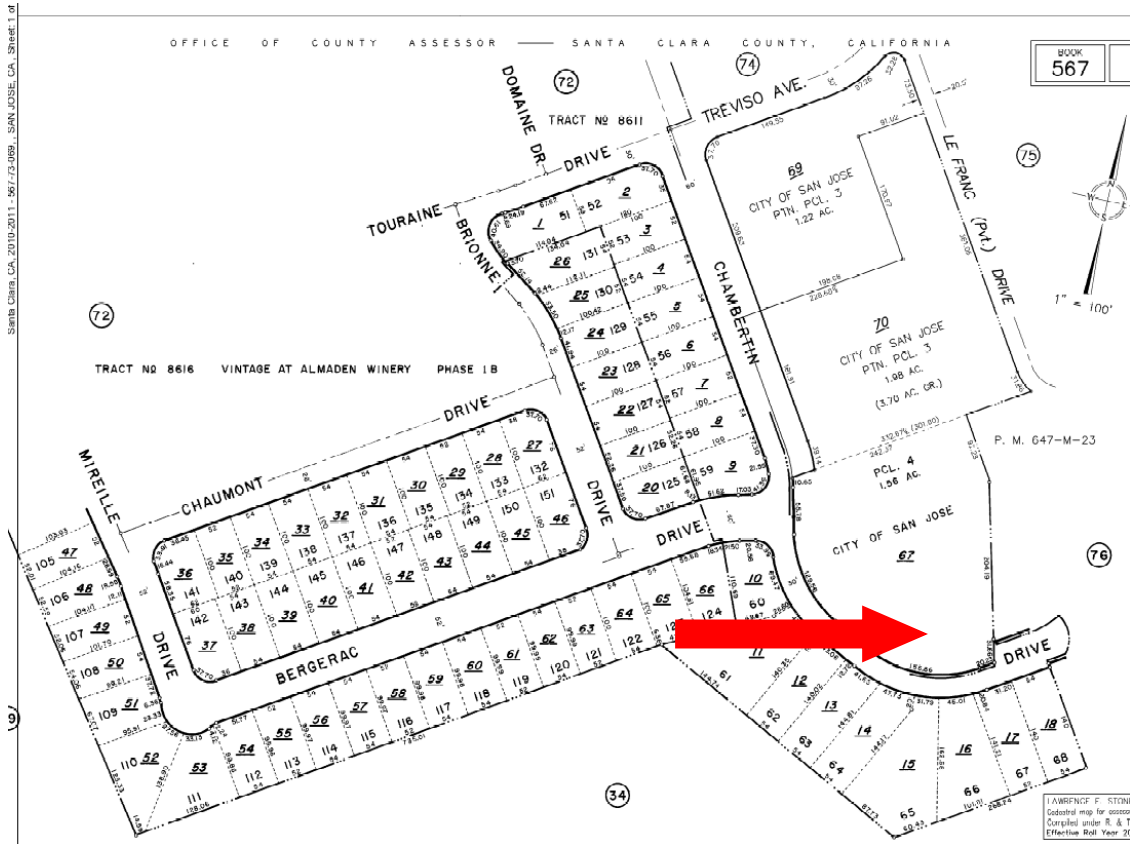
**Kirk Community Center**

1601 Foxworthy Avenue, San José, CA 95118

Access and right to use the space were granted from July 1, 2018 to January 1, 2022

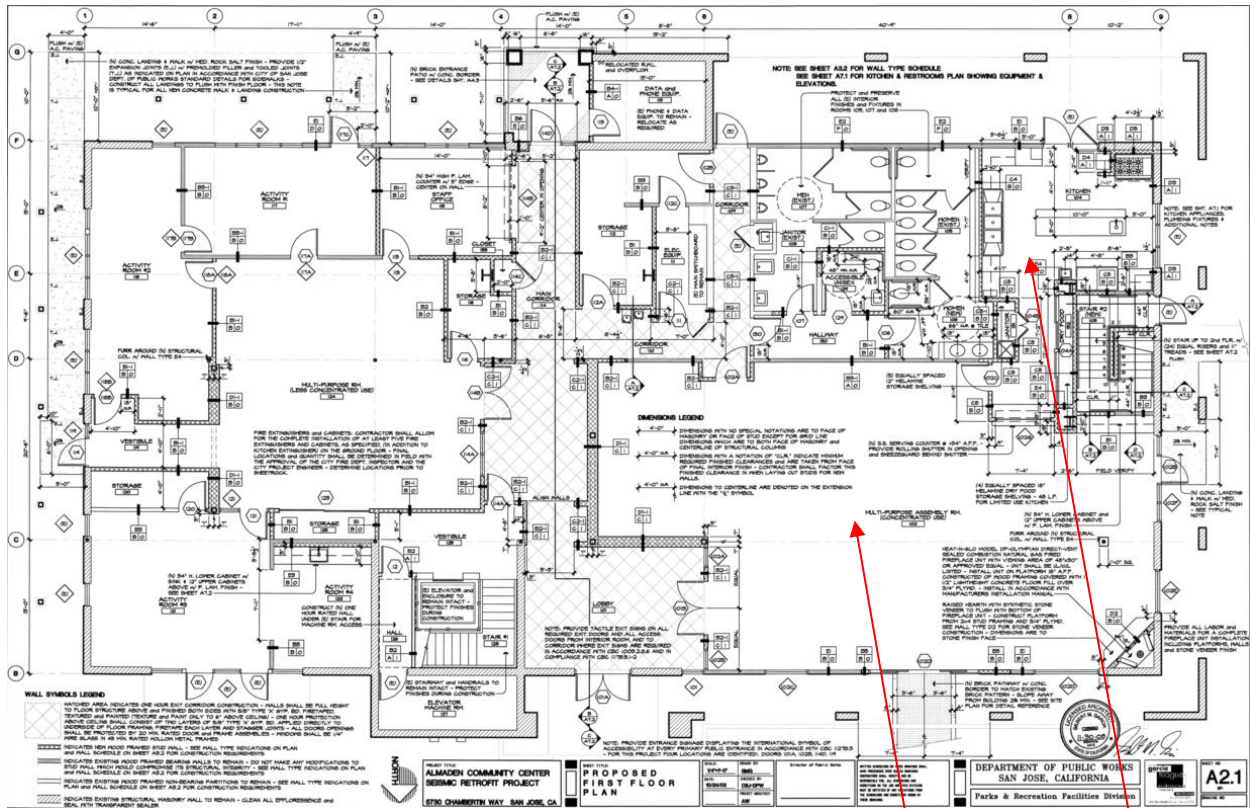
**EXHIBIT B**

**Old Almaden Winery Community Center**  
5730 Chambertin Drive, San José, CA 95118  
APN 567-73-067





# Old Almaden Winery Community Center First Floor



Multipurpose Room and Kitchen



# Memorandum

**TO:** Jon Cicirelli, Director of PRNS

**FROM:** Petra Rigüero, SPU Program Manager

**SUBJECT:** Approval of Retroactivity

**DATE:** JUNE 8, 2022

**IN THE FIRST AMENDMENT TO THE AGREEMENT FOR OFFICE OF ECONOMIC DEVELOPMENT AND CULTURAL AFFAIRS, WORK2FUTURE**

Approved

Date

7/27/2022

**SUBJECT: APPROVAL OF RETROACTIVITY IN THE FIRST AMENDMENT TO THE MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF SAN JOSE DEPARTMENT OF PARKS, RECREATION, AND NEIGHBORHOOD SERVICES AND THE CITY OF SAN JOSE OFFICE OF ECONOMIC DEVELOPMENT AND CULTURAL AFFAIRS FOR KIRK COMMUNITY CENTER AND OLD ALMADEN WINERY COMMUNITY CENTER**

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 Parks, Recreation, and Neighborhood Services (PRNS) Department is seeking authorization for the retroactive provision to pay for services in the agreement between PRNS and Office of Economic Development and Cultural Affairs (OEDCA):

- 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.

In 2018, PRNS and the Office of Economic Development and Cultural Affairs (OEDCA) entered into a Memorandum of Agreement (Memorandum) granting OEDCA's community partner, work2future, non-exclusive use of Neighborhood Center Partner Program (NCPP) sites (formerly known as Community Center Reuse sites) Kirk Community Center and Old Almaden Winery Community Center for hosting various employment and economic stabilization programs for youth. In late 2021, OEDCA's request to terminate operations at Kirk Community Center, lead to negotiations for an amendment to Memorandum for removal of the center and all associated fees from the agreement.

The Department understands that retroactive agreements are to be avoided. However, in this instance, unforeseen pandemic related interruptions stalled the move out process and suspended contract negotiations between PRNS and OEDCA. Additionally, staffing transitions and other unexpected COVID-related circumstances during this period further postponed the contract processing timeline and execution. As a result, retroactivity of the agreement was unavoidable. The Department requests an exception be made and the agreement detailed in this memorandum be allowed to proceed with retroactive clauses. The Department acknowledges the process was out of City contract compliance and will monitor future agreements to prevent this oversight in the future.



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Petra Rigüero  
Strategic Partnerships Unit,  
Program Manager

- **Office of Economic Development and Cultural Affairs, work2future**

For questions please contact Petra Rigüero, Program Manager, at (408) 793-4198.



- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: Molly Vasquez  
 EMAIL: Molly.Vasquez@sanjoseca.gov

**SCANNED SIGNATURE AUTHORIZATION**

DATE: 7/20/22  
 TO: Nancy Klein  
 EMAIL: nancy.klein@sanjoseca.gov  
 PHONE: \_\_\_\_\_

TOTAL PAGES: \_\_\_\_\_  
 (INCLUDING THIS PAGE) \_\_\_\_\_  
 TO: \_\_\_\_\_  
 EMAIL: \_\_\_\_\_  
 PHONE: \_\_\_\_\_

I agree to use electronic signatures

I agree to use electronic signatures

BY: Nancy Klein

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: Revenue Agreement

### REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 664303-001

Contractor: City of San Jose Office of Economic Development and Cultural Affairs

Address: City of San Jose 200 East Santa Clara St. 17th Floor San Jose, CA 95113

Phone: (408) 535-8181

Email: dat.luu@sanjoseca.gov

Contract Description: Amendment to remove Kirk Community Center and all associated fees from the original MOU between PRNS & OEDCA for the operation of OEDCA's work2future program at Kirk Community Center and Almaden Winery Community Center.

Term Start Date: 7/1/2018

Term End Date: 6/30/2025

Extension: No

Method of Procurement: N/A

RFB, RFP or RFQ No.: NA

Date Conducted: NA

Agenda Date (if applicable): 6/21/2022

Agenda Item No.: 2.22

Resolution No.: 80587

Ordinance No.: NA

Original Contract Amount: \$1,388,912.70

Amount of Increase/Decrease: \$426,168.66

Option #: \_\_\_ of \_\_\_ Option Amount: NA

NTE/Updated Contract Amount: \$962,744.04

Fund/Appropriation: 001-0642

Form 700 Required (Selection mandatory for processing): No

Revenue Agreement: Yes

Tax Certificate No.: NA

Expiration Date: NA

Department: PRNS (64)

Department Contact: Molly Vasquez x35594

Customer (Finance Only): \_\_\_\_\_

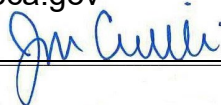
Notes: DB# 647137

Retroactive Memo

Project Manager: pauline.khek@sanjoseca.gov

Please also email: prns.contracts@sanjoseca.gov

Department Director Signature: \_\_\_\_\_



7/27/2022

Date

Office of the City Manager Signature: \_\_\_\_\_

Date