

## AGREEMENT

THIS AGREEMENT is hereby made and entered into this 20<sup>th</sup> day of February 2024, (the "effective date") by and between the City of Delray Beach, a Florida municipal corporation ("City"), whose address is 100 N.W. 1st Avenue, Delray Beach, Florida 33444, and Carnahan, Proctor and Cross Inc. (hereafter referred to as "Contractor"), a Florida Corporation authorized to do business in Florida whose address is 814 S. Military Trail, Deerfield Beach, FL, 33442.

WHEREAS, the City desires to retain the Contractor to provide professional Construction Engineering and Inspection (CEI) services for N. Swinton Ave Roadway & Utility Improvements in accordance with the City's Request for Qualification (RFQ) No. 2023-041 and the Contractor's response thereto, all of which are incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter to set forth, the Contractor and the City agree as follows:

### ARTICLE 1. INCORPORATION OF REQUEST FOR QUALIFICATION

The terms and conditions of this Agreement shall include and incorporate the terms, conditions, and specifications set forth in the City's RFQ No. 2023-041, and the Contractor's response to the Request for Qualification, including all documentation required thereunder.

### ARTICLE 2. DESCRIPTION OF GOODS OR SCOPE OF SERVICES

The Contractor shall provide professional Construction Engineering and Inspection (CEI) services for N. Swinton Ave Roadway & Utility Improvements pursuant to the specifications set forth in the City's Request for Qualification No. 2023-041, as modified by Exhibit "A" Scope of Work, attached hereto and incorporated herein by reference.

### ARTICLE 3. COMPENSATION

The City shall pay to the Contractor, in compliance with the Pricing Schedule attached hereto and incorporated herein as Exhibit "B" Fee Schedule, according to the terms and specifications of the referenced solicitation.

### ARTICLE 4. MISCELLANEOUS PROVISIONS

a. Notice Format. All notices or other written communications required, contemplated, or permitted under this Agreement shall be in writing and shall be hand delivered, telecommunicated, or mailed by registered or certified mail (postage prepaid), return receipt requested, to the following addresses:

- i. As to the City: City of Delray Beach  
100 N.W. 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444  
Attn: City Manager

RFQ No. 2023-041

CEI Services for N. Swinton Avenue Roadway – Underground Utility Improvements

- ii. with a copy to: City of Delray Beach  
100 N.W. 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444  
Attn: City Attorney  
Email: [GelinL@mydelraybeach.com](mailto:GelinL@mydelraybeach.com)
- iii. As to the Contractor: Carnahan, Proctor and Cross, Inc  
814 S. Military Trail  
Deerfield Beach, FL 33442  
Attn: Gregory Proctor, President  
Phone: 954-972-3959 Ext. 120  
Email: [gprocotr@cpc-eng.com](mailto:gprocotr@cpc-eng.com)

b. Headings. The headings contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

c. Effective Date. The effective date of this Agreement shall be as of the date it has been executed by both the parties hereto.

#### ARTICLE 5. E-VERIFY.

By entering into this Agreement Contractor acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Contractor affirms and represents it is registered with the E-Verify system, utilizing same, and will continue to utilize same as required by law. Compliance with this section includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply with this section will result in the termination of this Agreement, or if your subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by Contractor, the Contractor may be prohibited from conducting future business with the City or awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs shall be the responsibility of the Contractor.

#### ARTICLE 6. CONTRACT TERM

The term of this Agreement shall commence upon execution date of this Agreement through the completion of work and upon full acceptance by the City, unless terminated earlier in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the City and the Contractor executed this Agreement as of the day and year first above written.

ATTEST:

Katerri Johnson  
Katerri Johnson, City Clerk

CITY OF DELRAY BEACH

By: Shelly Petrolia  
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin  
Lynn Gelin, City Attorney



CARNAHAN, PROCTOR AND CROSS INC.

By: Greg Proctor

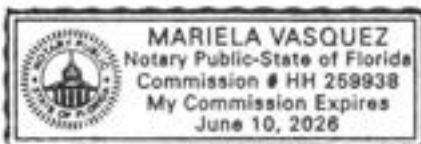
Print Name: Greg Proctor

Title: President

STATE OF Florida  
COUNTY OF Broward

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 29<sup>th</sup> day of January, 2024 by Greg Proctor (name of person), as President (type of authority) for CPC (name of party on behalf of whom instrument was executed).

Personally known ☒ OR Produced Identification ☐  
Type of Identification Produced \_\_\_\_\_



Mariela Vasquez  
Notary Public – State of Florida





## CONSTRUCTION ENGINEERING & INSPECTION SERVICES PROPOSAL

DATE: NOVEMBER 06, 2023

CONSULTANT: CARNAHAN PROCTOR AND CROSS, INC.

CONTRACT NO. \_\_\_\_\_ FOR CEI SERVICES

CITY P.O. NO. \_\_\_\_\_ CITY EXPENSE CODE: \_\_\_\_\_

CITY PROJECT NO. 19-012 CONSULTANT PROJECT NO. P23-096

**TITLE: N. Swinton Avenue Roadway & Underground Utility Improvements, The City of Delray Beach, FL.**

### Professional Services

This Proposal, when executed, shall be incorporated in and shall become an integral part of the Contracting Instrument to be specified by the City and as mutually agreed to by the Consultant.

### 1. PROJECT DESCRIPTION

The City of Delray Beach (City) wants Carnahan, Proctor & Cross, Inc. (Consultant) to provide Professional Engineering Services relating to the Construction of N. Swinton Avenue Roadway & Underground Utility Improvements (Project), in accordance with the terms, conditions, and specifications contained in the Request for Qualifications RFQ NO.: 2023-041. The Scope of Services Consultant will provide for this Project will include civil engineering and construction services in support of the City's selected construction contractor's efforts to construct curbs, sidewalks, drainage, landscape nodes, pedestrian lighting, signage, full depth pavement reconstruction, pavement markings, on-street bike lanes, one (1) intersection roundabout, sanitary sewer lining, reclaimed water main and potable water main. Consultant will provide Construction Engineering and Inspection (CEI) services in accordance with City policies, procedures, standards, and requirements for roadway, utility, accessibility, lighting, and landscape improvements.

### 2. SCOPE OF SERVICES

The following Scope of Services was developed in accordance with the information included in RFQ NO.: 2023-041 issued by the City and submittals it received on or before May 10, 2023, and as further discussed in the 1<sup>st</sup> Negotiations Meeting on October 31<sup>st</sup>, 2023. Consultant will provide services throughout the construction of the Project that will include the following Major Tasks: (1) Construction Administration and Engineering; (2) Inspection Services; (3) Public Outreach; and (4) Surveying (optional additional services), as more specifically defined in the Sub-Tasks below.

### 3.3 CONSTRUCTION ADMINISTRATION AND ENGINEERING

The Consultant shall provide construction engineering services to include, but not be limited to:

3.3.1. **Constructability Field Review** – CEI Consultant shall conduct a field review of the Contract Drawings with the awarded Contractor to determine if there are any constructability issues, conflicts not shown, or any Contractor proposed cost saving changes. The intent is to address these items prior to construction. CEI Consultant will coordinate a meeting with the City and Engineer of Record to discuss any issues discovered and recommendations to resolve. The meeting shall be documented with minutes.

3.3.2. **Preconstruction Meeting** – CEI Consultant shall prepare an agenda and facilitate the pre- construction meeting with the City's awarded Contractor and City staff. CEI Consultant will coordinate with all associated permitting Agencies to attend the meeting. CEI Consultant will prepare, and issue written minutes of pre-construction meeting.

3.3.3. **Submittal Review** – CEI Consultant shall receive, log, and review shop drawings and product submittals for general conformance with the design intent and provisions of the Contract Documents. CEI Consultant will review and return submittals to City and Contractor within 14 calendar days of receipt. A detailed submittal log shall be maintained and updated throughout the project duration including, but not limited to, dates submitted, received, reviewed, returned along with a record of review comments.

3.3.4. **Progress Meetings** – CEI Consultant shall attend construction progress meetings with the City and Contractor. CEI Consultant shall conduct at least one (1) formal progress meeting per month with an agenda and written summary of the issues discussed.

3.3.5. **Pay Estimate Review** – CEI Consultant shall review monthly payment applications submitted in a format acceptable to the City. CEI Consultant shall verify the quantities and invoiced amount as represented on the pay request and make a written recommendation to the City to proceed with the payment as requested, or as modified based on CEI Consultant review.

3.3.6. **Construction Schedule Review** – CEI Consultant shall monitor the construction schedule and review the Contractor's 2-week look ahead schedule with CEI Consultant's inspector. CEI Consultant shall report to the City any condition that may cause project delay. If schedule slippage is identified, CEI Consultant will notify the Contractor in writing and request the Contractor to provide a recovery plan and an updated schedule.

3.3.7. **Construction Clarifications** – CEI Consultant shall respond in writing to Contractor's Request for Information (RFI) regarding the Contract Documents. CEI Consultant shall coordinate with Engineer of Record (EOR) as required to issue design interpretations and clarifications of the Contract Documents, along with associated support materials, as requested by the Contractor. These interpretations will be rendered, and a response prepared and submitted to the Contractor in a timely manner. A detailed RFI log shall be maintained and updated throughout the project duration including, but not limited to, dates submitted, received, reviewed, returned along with a record of responses.



3.3.8. **Construction Claims and Changes** – Consultant shall prepare, review, and negotiate City requested or Contractor initiated Field Order (FO), Work Change Directive (WCD), or Change Order (CO) during the construction period. Consultant will review and discuss recommendations with City all Contractor delay claims or requests for additional compensation within the construction period. Consultant shall respond to the Contractor's claims in accordance with the Contract Documents. Consultant shall not verbally or in writing execute any change orders with the Contractor. The City has sole authority to execute change orders.

3.3.9. **Quality Assurance (QA) Program** – Consultant shall develop a QA Plan and furnish the QA Plan to the City's Project Manager for approval. The QA Plan shall detail the procedures, evaluation criteria, and instructions of the CEI Consultant's organization for providing services pursuant to this scope. CEI Consultant shall maintain all necessary records for QA Plan compliance and initiate QA Plan Review to make any necessary revisions during the construction period.

3.3.10. **Tracking & Oversight of Material Samples** – CEI Consultant shall track and oversee Contractor's Testing Lab for all specified material certifications, samples, and testing, while verifying Chain of Custody. CEI Consultant shall also review signed and sealed reports from testing agencies for compliance.

3.3.11. **Certification of Construction Completion** – CEI Consultant shall notify the City and Contractor in writing once the Project is deemed to meet contract completion milestones. CEI Consultant shall certify based on visible inspections, and review of testing reports that the project was constructed in general conformance with the Contract Documents and all permit Conditions.

3.3.12. **Public Records Request Assistance** – CEI Consultant shall assist the City project manager with any public records request received regarding this project. CEI Consultant shall gather and provide all required information in a timely manner.

3.3.13. **Substantial Completion and Final Completion Inspections** – In conjunction with City staff, CEI Consultant shall make preliminary and final inspections at Substantial Completion (SC) and Final Completion (FC). CEI Consultant shall prepare a Project Completion "punch list" after preliminary inspection at SC and FC. CEI Consultant shall review completion of identified punch list items before final inspection to assist in the determination that if SC or FC has been achieved by the Contractor. CEI Consultant shall advise the City and provide formal notice to the Contractor once SC or FC of the project has been reached in accordance with the Contract Documents.

3.3.14. **Record Drawings** – CEI Consultant shall review monthly progressive as-built record drawings from the Contractor and provide comments to achieve the final set of signed and sealed as-built record drawings upon FC.

3.3.15. **Coordination with FPL, FDEP, City, and Private Utility Companies** – CEI Consultant shall provide a representative to coordinate with City Utilities Department and all private utilities providing overhead and underground utilities. CEI Consultant's representative shall coordinate with FPL before and during its conduct of installation of the pedestrian light pole. CEI Consultant's representative shall provide coordination with the respective service providers

to allow for mail/parcel delivery and garbage/recycling pickups during construction CEI Consultant's representative shall attend utility coordination meetings. Consultant shall also monitor Contractor's baseline and updated construction schedules to verify that the any necessary utility relocations do not impact the Contractor's work sequence and notify the City and Contractor when and if the relocation work affects the Contractor's schedule.

CEI Consultant's representative shall provide services in this task to confirm contractor's **FDEP NPDES Compliance Verification**. CEI shall coordinate for the Contractor to submit the NPDES NOI and NOT for the project; shall monitor the Contractor's adherence to the requirements of the SWPPP; and shall collect and monitor the Contractor's reporting as required under the NPDES permit requirements.

3.3.16. **Project Commissioning** – CEI Consultant shall provide assistance, as requested, to the Contractor and City to implement project commissioning and turnover to City's O&M staff. Duties will include, but not be limited to, assisting with the planning and scheduling of facilities start-up, including equipment testing, personnel training, operational demonstration, turnover and warranty initiation.

3.3.17. **Project Closeout** – In conformance with contract documents, CEI Consultant will review, and deliver to the City Project Manager the required contract documentation to be submitted by the Contractor as listed under the construction agreement. In addition, the Consultant will provide one complete set of final shop drawing submittals and the Contractor's field mark-up drawings demonstrating any construction deviations from the original construction plans.

### 3.4 **INSPECTION SERVICES**

The Consultant shall provide one (1) full-time (40 hours per week) inspector during construction of the work for the entire duration of the contract.

Activities performed by Consultant under this task consist of furnishing Inspector during the construction of the project, to observe the quality of the construction work, and to determine, in general, if the construction is proceeding in accordance with the Contract Documents so that an engineering certification can be made in accordance with City and outside agency permit requirements.

The Consultant shall provide inspection services to include, but not be limited to:

- Serve as owner's representative with construction Contractor, working principally through the Contractor's Superintendent and assisting him in understanding the intent of the Contract Documents.
- Provide daily reports and submit it daily to CEI Consultant for approval. Daily reports should document all Contractor and Subcontractor personnel, all equipment on-site, whether it is idle or not, materials, quantities of work performed, weather condition, daily narrative of site activities, and any other necessary information. Daily Report should include photographic documentation of construction activities daily.



- Verify that the Contractor is complying with National Pollutant Discharge Elimination System (NPDES) and Stormwater Pollution Prevention Plan (SWPPP) plans, which are required by the Contractor to maintain during construction.
- Ensure that Contractor is complying with all City, State and Federal safety standards and that there is strict adherence to approved Maintenance of Traffic (MOT) plans.
- Conduct on-site observations of the work in progress to assist in determining if the work is proceeding in accordance with the Contract Documents and that completed work conforms to the Contract Documents. Consultant's inspector shall report, in writing to the City, whenever Consultant believes that work is unsatisfactory, faulty, defective, does not conform to the Contract Documents, does not meet the requirements of inspections, tests or approval required to be made, or has been damaged prior to final payment.
- Accompany visiting inspectors representing permit or regulatory agencies having jurisdiction over the project. Record in writing the outcome of these inspections and report to City.
- Consider and evaluate construction Contractor's suggestions for modifications in drawings or specifications and report them to the City, in writing. CEI Consultant's Construction Manager shall make recommendation for action by the City.
- Review Contractor's as-built record drawing information on a monthly basis to confirm proper updates are being made.
- Assist the Contractor in coordinating all required materials and density testing, as required by the Construction Documents.
- Inspectors shall work with the Contractor and develop a daily pay item quantity sheet (based on the approved Schedule of Values) to be reviewed and accepted each day agreeing to the quantities of Schedule of Value items installed.

## **LIMITATIONS OF AUTHORITY**

Limitations of inspector's authority, except upon written instructions from the City:

- Shall not exceed limitations on CEI's authority as set forth in the Contract Documents.
- Shall not undertake any of the responsibilities of Contractor, Subcontractors or CEI Construction Manager, or expedite the work.
- Shall not issue directions relative to any aspect of means, methods, techniques, sequences, or procedures of construction unless such is specifically called for in the Contract Documents.
- Shall observe and oversee but not participate in specialized field or laboratory tests.



### 3.5 **PUBLIC OUTREACH**

Consultant shall provide a Public Information Officer (PIO) to provide public outreach services and be proactive in keeping the community aware of the status and traffic impacts of the referenced project.

Consultant shall provide public outreach services to include, but not be limited to:

- Consultant needs to be involved with residents daily to keep the residents well-informed regarding what the Contractor is going to do each week.
- With approval from the City's designee, prepare and disseminate information to the public, elected officials and the media regarding any upcoming events, which will affect traffic flow.
- Produce and distribute all publications (letters, door hangers, mail notifications to homeowners (including postage), flyers, brochures, and news releases to the public) necessary for this construction contract. Prior to release, the City's designee will approve all responses, letters, provide drone photography, news releases, and the like.
- The PIO shall establish a continuously updated webpage, provide timely and professional responses to project inquiries including emails, telephone calls, etc. and coordinate public information meetings, open houses, and community meetings as directed by the City's representatives.
- Consultant shall maintain a website linked to the City's website and provide current and accurate information weekly, at a minimum. The website must be capable of receiving email inquiries regarding the project and be linked to the City's Website. The website will be operational for the duration of this contract.
- Consultant shall administer a project hotline and create and maintain a log of resident concerns including name, contact information, type of concern, date received and status of resolution. The complaint log needs to be updated, shared with City project manager weekly, at a minimum.
- Consultant will support the City in providing ongoing public information and education about the project and construction progress activities.
- Consultant will also support the City in resolving individual complaints or issues from concern log.

### 3.6 **ADMINISTRATIVE SERVICES**

Consultant shall provide all software and hardware necessary to efficiently and effectively conduct all responsibilities mentioned above. Ownership and possession of computer equipment and related software, which is provided by the Consultant, shall always remain with the Consultant. The Consultant shall retain full responsibility for any risk of loss or damage.

### 3.7 **SURVEYING (OPTIONAL ADDITIONAL SERVICES)**

Consultant shall provide a surveyor, licensed in Florida, to check or establish the survey control baseline(s) along with sufficient baseline control points and benchmarks at appropriate intervals along the project to:

- Perform incidental engineering surveys for compliance with City, State, and Americans with Disabilities Act (ADA) regulations.
- Facilitate any permits, easements, recording of easement, additional inspections requiring survey including public outreach, right-of-way, or landscape removal coordination.
- Conduct property easement or land acquisition boundary surveys or legal sketch & descriptions.

### 4. **COMPENSATION**

Compensation for Task 3.3 **CONSTRUCTION ADMINISTRATION AND ENGINEERING** of Consultant's services described herein shall be rendered by the City monthly, and on a Lump Sum per Task, Percentage of Completion basis in accordance with Task Values specified in **Exhibit C-2** attached. Compensation for Task 3.4 **INSPECTION SERVICES**, and Task 3.5 **PUBLIC OUTREACH** of Consultant's services described herein shall be rendered by the City monthly, and on an Hourly basis in accordance with Task Hourly Rate Values specified in **Exhibit C-2** attached. Compensation for Task 3.7 **SURVEYING (OPTIONAL ADDITIONAL SERVICES)** of Consultant's services described herein shall be based on specific Survey Work Requests (SWR) authorized by the City, and will be rendered by the City monthly, and on an Hourly basis in accordance with Task Hourly Rate Values specified in **Exhibit C-2** attached. Compensation for Expenses in addition to hourly based services described in Task 3.5 **PUBLIC OUTREACH** will be as requested and agreed to by the City and will be invoiced as actually incurred by the Consultant and will be supported by its third party vendors' invoices. Consultant's estimates for those expenses are indicated in attached **Exhibit F**. Consultant shall submit an invoice to the City, each month, after the services have been performed and have been received and accepted by the City.

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Don't let your business go bankrupt.

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## CITY ATTORNEY OFFICE - LEGAL REVIEW CHECKLIST

Name of Agreement: Agreement

Department: Public Works

Contact person: Eddyson Etienne

City Manager approval ☐

City Commission approval ☐

Reviewed by Purchasing ☐

Agenda item #:

Agenda meeting date:

Resolution #:

Agreement Action:

New ☒

Renewal\* ☐

Amendment\* ☐

\*Renewal: Only change is the agreement term

\*Amendment: For changes other than/in addition to term

Does the Contractor require the City to sign first?: No

For City Attorney Use only:

Agreement Terms:	Comments/Specific Provision in Agreement
Term (Duration of Agreement)	Bid pg. 5 Sec. 1.3; Effective date until completion and acceptance by City
Termination Clause	Bid pg. 52 Sec 28 and 29; termination for convenience and default for the City
Renewal Clause	N/A
Insurance	City standard
Indemnification	City standard
Assignment	Bid Pg. 51 Sec. 22
Fiscal Funding Requirement	Bid Pg. 55 Sec. 66
FL Public Records Provision (2016)	Bid. pg 55 Sec. 50
Inspector General Provision	Bid pg. 52 Sec. 32
Governing Law	Florida
Venue	Palm Beach County
Attorney's fees	Bid pg. 54 sec. 42
E-verify	Agreement Art. 5

Business Principles:	Comments
Fees: Total Value	\$890,298.43
Fees: Per Fiscal Year	

Other Issues:	Comments
Non-Negotiable Issues/ Miscellaneous Issues/ Special Considerations	

Consistent with applicable policies including, but not limited to, Procurement policies. Yes ☐

Attorney: Daniela Vega, Esq.

Reviewed and approved as to form and legal sufficiency only

Form version 5, March, 2018



RESOLUTION NO. 39-24

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA APPROVING AN AGREEMENT WITH CARNAHAN, PROCTOR AND CROSS, INC. FOR PROFESSIONAL CONSTRUCTION ENGINEERING AND INSPECTION SERVICES PURSUANT TO REQUEST FOR QUALIFICATION NO. 2023-041; AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AMENDMENTS AND/OR RENEWALS THERETO AND TAKE ANY AND ALL ACTIONS NECESSARY TO EFFECTUATE THIS AGREEMENT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Delray Beach ("City") is authorized to enter into agreements to provide services, programming, and products in accordance with its Charter; and

WHEREAS, the City requires professional construction, engineering and inspection services to provide construction of North Swinton Avenue and underground utility improvements; and

WHEREAS, the City desires to enter into an agreement with Carnahan, Proctor and Cross, Inc. ("Contractor") for professional construction engineering and inspection services pursuant to Request for Qualification No. 2023-041; and

WHEREAS, the City Commission deems approval of this Resolution to be in the best interest of the health, safety, and welfare of the residents and citizens of the City of Delray Beach and the public at large.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are hereby affirmed and ratified.

Section 2. The City Commission of the City of Delray Beach has reviewed and hereby approves the Agreement between the City and Carnahan, Proctor and Cross, Inc., attached to this Resolution as Exhibit "A".

Section 3. The City Commission authorizes the City Manager to execute any amendments and/or renewals and take any and all actions necessary to effectuate the intent of this Resolution.

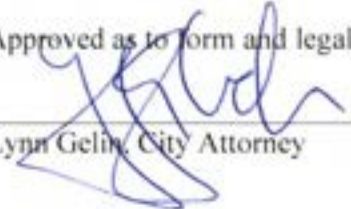
Section 4. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED in regular session on the 20<sup>th</sup> day of February, 2024.

ATTEST:

  
Katerri Johnson, City Clerk

  
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:  
  
Lynn Gelin, City Attorney

