

A-591/cr

**THIS AGREEMENT** made and entered into by and between the **CITY OF ATLANTIC CITY**, a municipal corporation of the State of New Jersey, located at 1301 Bacharach Boulevard, Atlantic City, New Jersey, 08401, hereinafter called "**CITY**", and **LUMBERMEN ASSOCIATES**, a corporation of the State of Delaware, with offices located at 2101 Hunter Road, Post Office Box 720, Bristol, Pa. 19007-0720, hereinafter called "**CONTRACTOR**", pursuant to Resolution No. 208 adopted by the Council of the **CITY** on April 20, 2022 a copy of which is attached hereto and made a part hereof.

**WITNESSETH:**

**WHEREAS**, there exists a need for the purchase of **BOARDWALK LUMBER** to be delivered to the City of Atlantic City, for use by the **DEPARTMENT OF PUBLIC WORKS-DIVISION OF BEACH & BOARDWALK**; and

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein and agreeing to be bound, the **CITY** for itself and its successors, and **LUMBERMEN ASSOCIATES**, for itself, its successors and assigns, hereby agree as follows:

**SECTION ONE  
DEFINITIONS**

Whenever in this Agreement the term "**CITY**" is used or a pronoun in its place, it shall mean and intend the **CITY OF ATLANTIC CITY** and/or Mayor of the **CITY OF ATLANTIC CITY**; wherever the term "**COUNCIL**" is used or a pronoun in its place, it shall mean and intend the governing body of Atlantic City; wherever the term "**CONTRACTOR**" or a pronoun in its place is used, the term shall refer to and mean **LUMBERMEN ASSOCIATES**.

**SECTION TWO  
SCOPE OF WORK**

**CONTRACTOR** will furnish and deliver, the particular place and places within said **CITY** designated by the City Purchasing Agent of the **CITY** or by her duly authorized representative, at such time and in such manner and quantities as may be authorized by said Agent or representative, on written order and within the time limit hereinafter provided, the following described **BOARDWALK LUMBER**, of the attached and herein below described Proposal of the **CONTRACTOR**, for the use by the Department of Public Works of the **CITY**

of Atlantic City, to be paid the **CONTRACTOR** by the **CITY** in the manner hereinafter provided.

**SECTION THREE  
CONTRACT PRICE**

The **CITY** shall pay **CONTRACTOR** for the **BOARDWALK LUMBER FOR THE DEPARTMENT OF PUBLIC WORKS** a total delivered sum not to exceed **ONE HUNDRED TWENTY-TWO THOUSAND NINE HUNDRED FIFTY-EIGHT DOLLARS ELEVEN CENTS (\$122,958.11)**

**SECTION FOUR  
CONTRACT DOCUMENTS**

The contract documents which comprise the contract between **CITY** and the contract documents which comprise the contract between **CITY** and **CONTRACTOR** are as follows:

- a. This agreement.
- b. Form of Advertisement, Notice to Contractors, Proposal Form, Specifications and Addenda, approved and adopted by the Council of the **CITY** and the bid or proposal of the **CONTRACTOR** received and publicly opened and read at a meeting of the Purchasing Board held April 6, 2022, covering the items set forth in this Agreement, all of which documents are attached hereto and on file in the Office of the City Clerk of the **CITY**, and are hereby made a part of this Agreement as though each were set forth verbatim herein.
- c. Any work required by one or more of said documents and not by the other shall be performed as if required by both. Any requirements pursuant to this Agreement or specifications in conflict with the Bid Proposal shall be governed by this agreement and specifications.
- d. Contractor shall be required to comply with City Ordinance No. 44 of 2014 and specifically subsections (a) and (b) of Article 1 establishing a first source employment

linkage program to facilitate and encourage private sector employment opportunities for Atlantic City residents.

- e. If there is any conflict between the terms and conditions of the specifications and the vendor's proposal, specifications control.
- f. Specifications and bid documents drafted by the Contractors shall include terms requiring bidders to make every effort to give preference when hiring sub-contractors, labors or other professionals to local Atlantic City residents and business to the extent allowable by law.

#### **SECTION FIVE PAYMENT METHOD**

Payment for the specified items, furnished, delivered and accepted hereunder, shall be made within THIRTY (30) DAYS after the **CONTRACTOR** has submitted a bill based upon the total delivered price set forth in this Agreement, together with a properly executed voucher, to the Comptroller's Office.

The **CONTRACTOR** agrees to present evidence satisfactory to the **CITY** that all transportation charges for delivery of the hereinabove provided for items have been fully paid by the said **CONTRACTOR**.

#### **SECTION SIX ALTERNATIVE DISPUTE RESOLUTION**

Disputes arising under the contract shall be submitted to a process of resolution pursuant to alternative dispute resolution practices, such as mediation, binding arbitration or non-binding arbitration pursuant to industry standards, prior to being submitted to a court for adjudication. Nothing in this section shall prevent the contracting unit from seeking injunctive or declaratory relief in court at any time. The alternative dispute resolution practices required by this section shall not apply to disputes concerning the bid solicitation or award process, or the formation of contracts or subcontracts. In addition, the Architect/Engineer or other interested parties to the

dispute shall be joined in any proceeding as a necessary party unless the arbitrator or person appointed to resolve the dispute determines that such joinder is inappropriate.

**SECTION SEVEN  
CONTRACT PERIOD**

The **CONTRACTOR** shall furnish and deliver the aforesaid **BOARDWALK LUMBER** for the Department of Public Works **ONE HUNDRED EIGHTY (180) WORKING DAYS OR SOONER** from and after the date of the purchase order.

**SECTION EIGHT  
LIQUIDATED DAMAGES**

In case the **CONTRACTOR** shall fail to deliver the aforesaid items within the time stated, it shall and will pay the **CITY** the sum of **TWO HUNDRED DOLLARS (\$200.00)** for each and every day the time consumed in completing such delivery may exceed the time herein allowed for that purpose. The aforesaid amounts shall be deemed and taken in all courts to be liquidated damages for nonperformance of delivery within the time specified limit aforementioned and not as a penalty.

The **CITY** Purchasing Agent shall determine and certify the amount and sum thus claimed by said **CITY** as such liquidated damages to the **CITY** Comptroller who shall deduct and retain same out of any monies due or which may become due under this Agreement.

**SECTION NINE  
PREFERENCE DOMESTIC PRODUCTS**

It is understood by and between the parties hereto that only manufactured products of the United States, wherever available, shall be used in connection with this Agreement, pursuant to R.S. 40A:11-18.

**SECTION TEN  
ASSIGNMENT**

The **CONTRACTOR** agrees not to assign or sublet this Agreement, in whole or in part, without the written consent of the **CITY**.

**CONTRACTOR** cannot assign its rights or obligations under this Agreement without the prior written consent of the **CITY**.

**SECTION ELEVEN  
GUARANTEE OF WORK**

In addition to manufacture's warranty the **CONTRACTOR** further agrees to warrant and guarantee the items delivered and furnished hereunder against defects in material for a period of ONE YEAR from the date of delivery, as more specifically set forth in the Specifications and Instructions to Bidders. This warranty specifically includes the replacement of any defective parts or products during the aforesaid period but does not cover damage to parts caused by the **CITY's** neglect or misuse of the items, or normal wear from service.

**SECTION TWELVE  
INDEMNIFICATION**

The **CONTRACTOR** agrees to indemnify and hold the **CITY** harmless from and against all suits, claims, actions or judgments for any injury or damage sustained or alleged to have been sustained by any party or parties by reason of the use of defective or improper materials, furnished and delivered under this Agreement, or by or on account of any act or omission of the **CONTRACTOR**, its subcontractors, agents or employees. In case any such action be brought against the **CITY**, the **CONTRACTOR** shall immediately take charge of and defend same at its own cost and expense. The **CITY** may, if it so desires, defend such actions and charge the expense of same to the **CONTRACTOR**.

**SECTION THIRTEEN  
RIGHT TO TERMINATE**

The **CITY** reserves the right at any time to discontinue and terminate this Agreement with notice upon the **CONTRACTOR** upon thirty (30) days written notice.

**SECTION FOURTEEN  
INTERPRETATION AND CONSTRUCTION**

Unless expressly provided otherwise herein, this agreement shall be governed by and construed in accordance with the Uniform Commercial Code of the State of New Jersey.

**SECTION FIFTEEN  
CONFLICT OF INTEREST**

The **CONTRACTOR** covenant that it presently has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the within Agreement. The **CONTRACTOR** further covenants that in the performance of this Agreement no person having any such interest shall knowingly be employed by the **CONTRACTOR** or its subcontractors.

**SECTION SIXTEEN  
EFFECT OF ILLEGALITY**

If any provision of this agreement is determined to be illegal or against public policy or to violate any provisions of law or code by a court of competent jurisdiction, the remainder of the agreement shall not be affected thereby.

**SECTION SEVENTEEN  
STATUS OF CONTRACTOR**

It is expressly understood and agreed by and between the parties hereto that the status of the Contractor and its employees, officers, and agents shall be that of independent contractors. It is not intended, nor shall it be construed, that the Contractor or any of its employees, officers and agents is an employee or officer of the City for any purpose whatsoever.

**SECTION EIGHTEEN  
INSURANCE**

Before commencing work, and as a condition precedent for payment, the Contractor shall purchase and maintain insurance, in conformance with the provisions contained in this Agreement.

This insurance will provide a defense and indemnify the City of Atlantic City (City) against any such

claim, damage, loss or expense that is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the work itself) including the loss of use, which arises out of the Contractor's operations under this agreement. This insurance shall apply regardless of whether the operations, actions, derelictions or failures to act from which the claim arises, are attributable to the Contractor, any of its Contractor's, officers, agents, subcontractors, employees, anyone directly or indirectly employed by any of them including anyone for whose acts of the aforementioned may be liable by operation of statute, government regulation, or applicable case law and the City, unless, caused by the sole negligence of the City.

Proof of this insurance shall be provided to the City before the work commences as set forth below. In no event shall the failure to provide this proof, prior to the commencement of work, be deemed a waiver by the City of the Contractor's insurance obligations set forth herein.

In the event that the insurance company (ies) issuing the policy (ies) required by this section deny coverage to the City, the Contractor will defend and indemnify the City at the Contractor's expense.

The Contractor must obtain the required insurance with the carrier rated A-VIII or better by A. M. Best. In the event the Contractor subcontracts any part of this project, these insurance requirements must apply to all subcontractors.

The Contractor shall maintain at least the limits of liability as set forth below:

***Commercial General Liability Insurance***

\$ 1,000,000.00 Each Occurrence (Bodily Injury and Property Damage)

\$ 2,000,000.00 General Aggregate

\$ 2,000,000.00 Products/Completed Operations Aggregate

\$ 1,000,000.00 Personal and Advertising Injury

Contractual liability that will respond to Indemnification shall be included in the policy. The General Liability and Umbrella/Excess Liability policy Aggregate Limits shall apply separately to the project/location as defined in Section Two, Scope of Services. As an alternative, the Contractor may provide Commercial General Liability Insurance with no aggregate.

***Comprehensive Automobile Liability Insurance***

\$ 1,000,000.00 Combined Single Limit Bodily Injury and Property Damage. Coverage must include all owned, non-owned and hired vehicles used by the Contractor.

***Umbrella Liability Insurance***

\$ 4,000,000 per Occurrence

\$ 4,000,000 Aggregate.

Policy to apply excess of General Liability, Automobile Liability and Coverage B.

***Workers' Compensation and Employers' Liability Insurance***

\$ 500,000.00 Each Accident

\$ 500,000.00 Each Employee for Injury by Disease

\$ 500,000.00 Aggregate for Injury by Disease

If the Contractor is a Sole Proprietor, Partnership or LLC, Insurance Policy and Certificate must indicate that the proprietor/partners/members are "included". This requirement does not apply if inclusion is not allowed by law.

***Other Conditions***

The City, along with their respective elected or appointed officials, officers, agents and employees, shall be named as Additional Insureds for Operations and Products/Completed Operations on the Contractor's Commercial General Liability Policy, Business Auto Liability and Excess Policy all of which must be primary and noncontributory with respect to the Additional Insureds.

It is expressly understood by the parties to this Agreement that it is the intent of the parties that any insurance obtained by the City is deemed excess, noncontributory and not co-primary in relation to the coverage (s) procured by the Contractor, any of its Contractor's, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them or by anyone for whose acts any of the aforementioned may be liable by operations of statute, government regulation or applicable case law.

A Waiver of Subrogation clause shall be added to the General Liability, Excess Liability, Automobile Liability and Professional Liability policies in favor of the City and this clause shall apply to the City's elected or appointed officials, officers, agents and employees. It should also apply to the Contractor's Worker's Compensation policy if allowed by state law.

Prior to commencement of work, Contractor shall submit a Certificate of Insurance in favor of the City and as an Additional Insured Endorsement (in a form acceptable to the City) as required hereunder.

In any and all claims against the Additional Insureds by any employee of the Contractor, anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damage, compensation or benefits payable by or for the Contractor under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

The Contractor shall maintain in effect all insurance coverages required under this Agreement at the Contractor's sole expense and with a carrier(s) rated A-VIII or better by A. M. Best. In the event the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, the City may, at its sole discretion, purchase such coverage as desired for the City's benefit and charge the expense to the Contractor, or, in the alternative, terminate this Agreement. In the event the coverage is

cancelled or non-renewed, the insurance carrier(s) will provide 30 days advance notice of the cancellation or non-renewal.

**SECTION NINETEEN  
WAIVER AND RENUNCIATION**

No waiver or renunciation by either party to this agreement with respect to any breach or default or of any right or remedy consequent thereon shall be deemed to constitute a continuing waiver or renunciation or a waiver or renunciation of any other breach or default or any other right or remedy consequent thereon unless such waiver or renunciation be expressed in writing, signed by the party making such waiver or renunciation and specifying the nature and extent of such waiver or renunciation.

**SECTION TWENTY  
CERTIFICATION OF COMPLIANCE**

**CONTRACTOR** represents that it is in compliance with all laws of the State of New Jersey, all Ordinances of the City of Atlantic City, including Ordinance No. 24 of 1993, Executive Order No. 1 of 1993, and Exhibit "A" attached hereto and made a part hereof, involving Affirmative Action and minority business participation and will remain so for the term of this Agreement, and failure to continue in compliance shall be deemed a breach of this Agreement.

**SECTION TWENTY-ONE  
FULL AGREEMENT**

This agreement constitutes the entire agreement between the parties and any prior understandings or representation of any kind preceding the date of this agreement shall not be binding on either party except to the extent incorporated in this agreement.

**SECTION TWENTY-TWO  
CONTRACT QUANTITIES**

It is understood and agreed by both parties hereto that the quantities set forth in the Proposal and Specifications, although estimated with as much accuracy as possible, are

approximate only and the CITY shall be liable only for so much of such items as may be required and ordered by it as aforesaid.

The CITY has the right to increase the quantities shown herein, but the increase shall not exceed 20% of any one item, for a period of twelve (12) months from the date of execution of this Agreement.

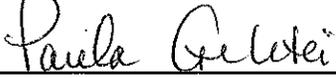
**SECTION TWENTY-THREE  
GOVERNING LAW**

This agreement shall be governed by, construed, and enforced in accordance with the laws of the State of New Jersey and the Ordinances of the City of Atlantic City.

The within Agreement is effective as of the date of the Mayor's signature.

IN WITNESS WHEREOF, the CITY has caused the Seal of the City of Atlantic City to be hereto affixed and this Agreement to be signed by the Mayor and attested by the City Clerk thereof, and the CONTRACTOR has caused this Agreement to be executed by its President and attested by its Secretary and its corporate seal to be hereto affixed the day and year first below written.

ATTEST:

  
\_\_\_\_\_  
Paula Geletei, City Clerk

CITY OF ATLANTIC CITY

BY:   
\_\_\_\_\_  
Marty Small, Jr., Mayor  
SK

Date: 6-27-00

ATTEST:

  
\_\_\_\_\_  
Secretary

LUMBERMEN ASSOCIATES

BY:   
\_\_\_\_\_  
President

The within Agreement approved as to form and execution.

Date: 6/27/2022

BY:   
\_\_\_\_\_  
Karl Timbers  
Assistant City Solicitor

STATE OF PA )

) ss.

COUNTY OF Bucks )

I CERTIFY that on June 21st, 2022,

Thomas C Colera, the Secretary or Assistant Secretary of the Corporation, personally came before me, and this person acknowledged under oath, to my satisfaction, that:

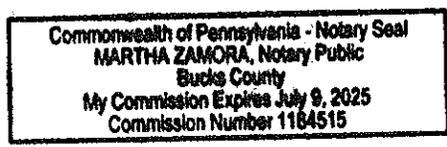
- (a) this person is the secretary or assistant secretary of LUMBERMEN ASSOCIATES, INC (the corporation named in this document);
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer of the corporation;
- (c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors and;
- (d) this person signed this proof to attest to the truth of these facts.

Signed and sworn to before me on

June 21, 2022

[Signature]  
Secretary or Asst. Secretary

[Signature]  
Notary Public of ~~New Jersey~~ Pennsylvania  
(Seal attached)



**EXHIBIT A**  
**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**  
**N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)**  
**N.J.A.C 17:27**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to **N.J.S.A. 10:5-31 et seq.**, as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with **N.J.A.C. 17:27-5.2.**

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex; and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personal testing conforms to the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable law and applicable Federal court decisions.

In conforming with the applicable targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at [www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance))

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.**

Company Name: LUMBERMEN ASSOCIATES  
Name: Thomas C Coleman  
Title: Ex VP / Secretary  
Signature:   
Date: 6/21/22

# Resolution of the City of Atlantic City

**No. 208**

Approved as to Form and Legality on Basis of Facts Set Forth

Factual contents certified to by

Assistant City Solicitor /s/ Karl Timbers

Paul Jerkins /s/ Director Public Works

Prepared by City Solicitor's Office

Council Member     RANDOLPH     presents the following Resolution:

**A RESOLUTION TO AWARD A CONTRACT TO LUMBERMEN ASSOCIATES INC. TO FURNISH AND DELIVER BOARDWALK LUMBER IN THE AMOUNT OF \$122,958.11**

**WHEREAS**, the bid of **LUMBERMEN ASSOCIATES INC.**, 2101 Hunter Road PO Box 720 Bristol, PA 19007-0720 received and publicly opened and read at a meeting of the Purchasing Board held on April 5, 2022, to furnish and deliver F.O.B. to the City of Atlantic City **TO FURNISH AND DELIVER BOARDWALK LUMBER** for a **TOTAL DELIVERED SUM** of **ONE HUNDRED TWENTY-TWO THOUSAND NINE HUNDRED FIFTY-EIGHT DOLLARS AND ELEVEN CENTS (\$122,958.11)**, and the said bid is hereby **ACCEPTED**, said **COMPANY** being the lowest responsible bidder for the undertaking; and

**WHEREAS**, the City of Atlantic City has the right to increase the quantities for a period of twelve (12) months from the date of the execution of contract, with the unit price governing, but not exceeding 20% of any item, as per the bid specifications; and

**WHEREAS**, the authority is hereby given to the Mayor to execute and the City Clerk to attest an agreement, to be entered into between the City of Atlantic City and **LUMBERMEN ASSOCIATES INC.**, for the hereinabove undertaking, in strict compliance with the Advertisement, Proposal Form, and the Specifications and Instructions to bidders therefore, said agreement to be approved as to form and execution by the City Solicitor; and

**NOW, THEREFORE, BE IT RESOLVED** that a Certificate from the Chief Financial Officer has been attached to this Resolution, showing the availability of funds from the CRDA Grant Nos. G-02-41-756-019-931 in the amount of \$85,724.57 and G-02-41-756-013-931 in the amount of \$37,233.54, to satisfy the aforesaid award of contract.

May 9, 2022 3:48 PM

DO NOT USE SPACE BELOW THIS LINE													
RECORD OF COUNCIL VOTE ON FINAL PASSAGE													
COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.
DUNSTON	X						RANDOLPH	X					
KURTZ	X						SHABAZZ	X				X	
MARSHALL	X						WEEKES	X					
MORSHED	X					X	ZIA	X					
							TIBBITT, PRESIDENT	X					
X-Indicates Vote    NV-Not Voting    AB-Absent    MOT-Motion    SEC-Second													

This is a Certified True copy of the Original Resolution on file in the City Clerk's Office.

DATE OF ADOPTION:     APRIL 20, 2022    

*Paula Geletei*

/s/ Paula Geletei, City Clerk