

1867/13

**THIS AGREEMENT**, made and entered into by and between the **CITY OF ATLANTIC CITY**, a municipal corporation of the State of New Jersey, herein referred to as "**CITY**" located at 1301 Bacharach Boulevard, Atlantic City, New Jersey, 08401, ~~KISBY LEE MECHANICAL, LLC~~ **KISBY-LEES MECHANICAL, LLC** located 610 N. New Jersey Avenue, Atlantic City, New Jersey 08401 hereinafter referred to as the "**CONTRACTOR**", pursuant to Resolution No 232 adopted by City Council on April 22, 2026 a copy of which is attached hereto and made a part hereof.

**WITNESSETH:**

**WHEREAS**, the City requires the services of a contractor to provide Phase III HVAC improvements for Gardner's Basin Ocean Life Center; and

**WHEREAS**, the Contractor is ready, willing, and able to undertake such services; and

**WHEREAS**, the City believes the Contractor to be well able to undertake and perform such services for the City and desires to contract with Contractor for the performance of such services.

**NOW, THEREFORE**, in consideration of the covenants and conditions set forth herein, and for other good and valuable consideration, the parties hereto agree as follows:

**SECTION ONE  
SCOPE OF SERVICES**

The services to be performed under this Agreement are as follows: **HVAC IMPROVEMENTS PHASE III (GARDNER'S BASIN ATLANTIC CITY OCEAN LIFE CENTER)** as described in the proposal attached hereto and made a part of this Agreement. In the event that there is a conflict between the terms and conditions of this Agreement and attachments, this Agreement shall supersede and control.

**SECTION TWO  
CONTRACT PRICE**

The City shall pay to the Contractor, and the Contractor agrees to accept as full and complete compensation for all of the work performed under this Agreement a total sum not to

exceed **EIGHT HUNDRED FIFTY-EIGHT THOUSAND DOLLARS (\$858,000.00)**.

### **SECTION THREE CONTRACT PERIOD**

The Agreement shall be for a term of one hundred eighty (180) days from complete execution hereof.

### **SECTION FOUR CONTRACT DOCUMENTS**

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 on March 26, 2026 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 in conflict with any requirement in the Bid documents shall be governed by this Agreement.
- 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, laborers or other professionals to local Atlantic City residents and businesses to the extent allowable by law.

## **SECTION FIVE PAYMENT METHOD**

Payment to CONTRACTOR shall be made upon submission of invoices for payment to the City Engineer and approval of the same by the Business Administrator.

It is expressly understood and agreed that payment of monies authorized under and by this Agreement shall only be funds appropriated by the Council of the City for the purpose of this Agreement and paid into the treasury of the City, therefore. Pursuant to NJSA 40:A:11-16.7 regarding changed conditions, should there be any additional work required, Contractor may not proceed to bill for any additional services without prior written consent of the City.

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

Disputes arising under the Agreement 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 City 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. (N.J. Stat. § 40A:11-50)

## **SECTION EIGHT TERMINATION, CANCELLATION, EXPIRATION**

The parties agree that either party can cancel this Agreement upon thirty (30) days written notice. At the termination, cancellation or expiration of this Agreement in any manner, the acceptance of final payment by the CONTRACTOR shall be in full satisfaction of all claims against the CITY under this Agreement.

## **SECTION NINE CERTIFICATE 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 "B" 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 TEN ASSIGNMENT**

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

## **SECTION ELEVEN CONFLICT OF INTEREST**

The CONTRACTOR covenants 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 TWELVE 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 THIRTEEN 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 FOURTEEN CHOICE OF LAW**

This Agreement shall be governed and construed in accordance with the law of the State of New Jersey and the ordinances of the City of Atlantic City. All actions, whether sounding in contract or tort, relating to the validity, construction, interpretation or enforcement of this Agreement shall be instituted in the courts of New Jersey and in the County of Atlantic and in no other.

## **SECTION FIFTEEN INDEMNIFICATION**

The CONTRACTOR shall indemnify, defend and hold harmless the CITY from and against any claim (including any claim brought by employees of Contractor), liability, damage or expense (including attorneys' fees) that City may incur relating to, arising out of or existing by reason of (i) Contractor's performance of this Agreement or the conditions created thereby (including use, misuse or failure of any equipment used by Contractor or its subcontractors, servants or employees) or (ii) Contractor's breach of this Agreement or the inadequate or improper

performance of this Agreement by Contractor or its subcontractors, servants or employees.

## SECTION SIXTEEN 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 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 Contractors, 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.

### Minimum of Liability:

The Contractor must obtain the required insurance with the carrier rated A-VII or better by A. M. Best. The Contractor and all subcontractors and vendors retained by 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 Section Fourteen, Indemnification, shall be included in the policy. The General Aggregate Limit shall apply separately to the work as defined in Section One, Scope of Services. As an alternative, the Contractor may provide Commercial general Liability Insurance with no aggregate. All subcontractors must also maintain all of the following insurances.

*Builders Risk*

The Contractor must obtain the required insurance with the carrier rated A-VII or better by A. M. Best. The Contractor shall provide such coverage as to protect the City's insurable interest in materials, fixtures and equipment being used in the construction or renovation of a building or structure. Coverage must apply to property of every kind or description intended to become a permanent part of the project including materials, supplies, fixtures, machinery, foundations, sidewalks and pavements.

*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.

*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.

*Additional Insured Status and Certificate of Insurance*

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 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 and Automobile 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. If the Contractor's policy limits are greater than the minimum limits noted above, the minimum limits required are automatically adjusted to those greater limits.

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.

#### No Limitation on Liability

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.

#### Failure to Obtain/Maintain, Cancellation and Renewal

The Contractor shall maintain in effect all insurance coverages required under this Agreement at the Contractor's sole expense and with insurance companies acceptable to the City. 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 Contractor will provide 21 days advance

notice of the cancellation or non-renewal.

#### **SECTION SEVENTEEN 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 EIGHTEEN 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 NINETEEN BINDING**

This Agreement shall be binding upon the heirs, assigns, and/or successors in right, title or interest of the parties to the Agreement.

#### **SECTION TWENTY CAPTIONS**

All captions in this Agreement are for convenience only. They should not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof.

**SECTION TWENTY-ONE  
MODIFICATION OF AGREEMENT**

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if in writing signed by each party or an authorized representative of each party.

Further, the City will not accept invoices representing time and expenses that were performed or incurred outside or beyond the contract end date.

Any work not specifically authorized may be rejected for payment at the discretion of the City.

**SECTION TWENTY-TWO  
POLITICAL CONTRIBUTION DISCLOSURE**

This Agreement has been awarded to **KISBY LEE MECHANICAL, LLC** based on the merits and abilities **KISBY LEE MECHANICAL, LLC** to provide the goods or services as described herein. This Agreement was awarded through a "fair and open process" pursuant to N.J.S.A. 19:44A-20.4 et seq. Nevertheless, the undersigned does hereby attest that ~~KISBY LEE MECHANICAL, LLC~~ **KISBY-LEES MECHANICAL LLC** their subsidiaries, assigns or principals controlling in excess of 10% of the company have neither made a contribution that is reportable pursuant to the Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-8 or 19:44A-16, in the one (1) year period preceding the award of the contract that would, pursuant to P.L. 2004, c.19, affect its eligibility to perform this Agreement, nor will it make a reportable contribution during the term of the Agreement that would affect its ability to perform under the Agreement.

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 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:

CITY OF ATLANTIC CITY

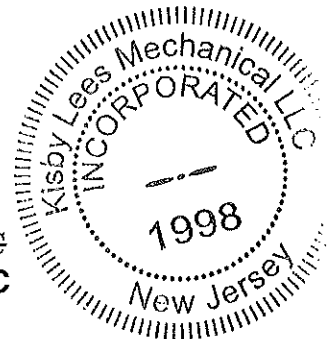
By: Paula Geletei  
Paula Geletei, City Clerk

By: Marty Small, Sr.  
Marty Small, Sr., Mayor

Date: 6-4-26

WITNESS:

~~KISBY LEE MECHANICAL, LLC~~  
KISBY-LEES MECHANICAL LLC



[Signature]  
By: [Signature]  
~~President~~ James J. Lees Jr., Principal

The Agreement approved as to form and execution.

Date: 4/2/26

By: [Signature]  
Peter T. Sallata, Esq.  
Assistant City Solicitor

STATE OF New Jersey )  
 ) ss.  
COUNTY OF Atlantic )

I CERTIFY that on May 26th, 2026, personally came before me James J. Lees Jr., a principal of the Limited Liability Corporation, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is a principal of  
Kisby-Lees Mechanical LLC  
(the limited liability corporation named in this document);
- (b) this person has the power and authority to sign this document on behalf of the limited liability corporation;
- (c) this document was signed and delivered by the limited liability corporation as its voluntary act duly authorized by a proper action of the principals of the limited liability corporation; and
- (d) this person signed this proof to attest to the truth of these facts.

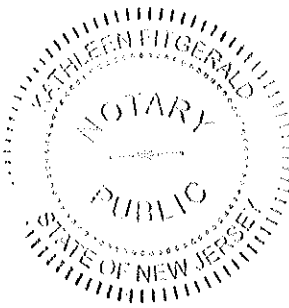
Signed and sworn to before me on

James J. Lees Jr. Principal

May 26th, 2026

*Kathleen Fitzgerald*  
Notary Public of  
(Seal attached)

KATHLEEN FITZGERALD  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires June 1, 2029



**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

**Kisby-Lees Mechanical LLC**

**Attached: Certification 8842 15-JUN-2021 to 15-JUN 2028**

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: Kisby-Lees Mechanical LLC

Name: James J. Lees Jr.

Title: Principal

Signature: \_\_\_\_\_

Date: May 26, 2026

# Resolution of the City of Atlantic City

No. 232

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

Factual contents certified to by

City Solicitor /s/Michael J. Perugini

City Engineer /s/ Uzoma Ahiarakwe, PE

Prepared by City Solicitor's Office

Council Members MARSHALL, RANDOLPH, SHABAZZ & KURTZ present the following Resolution:

## RESOLUTION TO AWARD A CONTRACT TO KISBY LEE MECHANICAL, LLC FOR PHASE III HVAC IMPROVEMENTS FOR GARDNER'S BASIN ATLANTIC CITY OCEAN LIFE CENTER IN THE AMOUNT OF \$858,000.00

**BE IT RESOLVED** by the City Council that the bid proposal of **KISBY LEE MECHANICAL, LLC**, located 610 N. New Jersey Avenue, Atlantic City, NJ 08401 for **PHASE III HVAC IMPROVEMENTS FOR GARDNER'S BASIN ATLANTIC CITY OCEAN LIFE CENTER** for a total delivered sum of **EIGHT HUNDRED FIFTY-EIGHT THOUSAND DOLLARS (\$858,000.00)**, be and the said bid is hereby **ACCEPTED**, said individual being the lowest responsible bidder for the undertaking.

**BE IT FURTHER RESOLVED** that authority is hereby given to the Mayor to execute and the City Clerk to attest to an agreement, to be entered into between the City of Atlantic City and **KISBY LEE MECHANICAL, LLC**, for the hereinabove undertaking, said agreement to be approved as to form and execution by the City Solicitor.

**BE IT FURTHER RESOLVED** that a Certificate from the Chief Financial Officer has been attached to this Resolution, showing the availability of funds from account C-04-24-RES-000-723 to satisfy the aforesaid award of contract. This agreement is contingent upon the availability of sufficient funds in the 2026 Temporary and Permanent Budgets, and in the event said funds are not appropriated this award will have no effect and will be null and void.

**BE IT FURTHER RESOLVED** that the award of contract is contingent upon State approval.

April 28, 2026 3:17 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. |
| AHMED                                                          | X   |     |      |      |      |      | KURTZ          | X   |     |      |      |      |      |
| BAILEY                                                         | X   |     |      |      |      |      | LACCA          | X   |     |      |      |      |      |
| CROUCH                                                         | X   |     |      |      |      | X    | MARSHALL       | X   |     |      |      |      |      |
| DUNSTON                                                        | X   |     |      |      |      |      | SHABAZZ        | X   |     |      |      | X    |      |
| RANDOLPH, 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 22, 2026

*Paula Geletei*  
/s/ Paula Geletei, City Clerk