

PROFESSIONAL SERVICES CONTRACT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This CONTRACT is made and entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "**CITY**"), a Texas municipal corporation, and Oniro, LLC dba Alpha Sleep Labs, having its principal place of business at 11931 Frankford Avenue, Lubbock, Texas 79424 (hereinafter referred to as "**VENDOR**").

I. PURPOSE

1.1 The purpose of this CONTRACT is to state the terms and conditions under which the **VENDOR** shall provide the **CITY** with sleep lab services.

II. TERM OF CONTRACT

2.1 The CONTRACT term is for a three-year period beginning July 1, 2023 and terminating June 30, 2026. At the **CITY**'s option, two additional one-year renewals are available contingent upon appropriation of funding.

III. SCOPE OF SERVICES

3.1 The **VENDOR** shall perform all the services as set forth in the **VENDOR'S** Proposal attached hereto as Exhibit "A" and incorporated by reference herein. The **VENDOR** understands and agrees that Exhibit A is a part of this CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by the **VENDOR** as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.

3.2 The terms of this CONTRACT shall control where there is any conflict between the terms of the **VENDOR'S** Proposal and the terms of this CONTRACT.

3.3 The **VENDOR** shall work with the **CITY**'s Human Resources Director, or designee/s, and with appropriate **CITY** officials to perform any and all related tasks required by the **CITY** in order to fulfill the purposes of this CONTRACT. The **VENDOR** agrees that Brian Read, will be **VENDOR'S** point of contact for the services to be performed under this CONTRACT. The **CITY** is an Equal Opportunity Employer and does not discriminate. **VENDOR** shall conduct all activities in accordance with this and all other applicable federal, state and local requirements.

3.4 **VENDOR** shall provide the following services when the City's Medical Examiner refers an employee for sleep study services:

3.4.1 Provide a Home Sleep Test (HST)

3.4.2 Perform In-Lab CPAP Titration Study

3.4.3 Provide DME Setup for CPAP Therapy – (Includes 1 CPAP Machine with 1 CPAP Humidifier, 1 CPAP Humidifier water chamber, 1 Heated Tubing, 1 Face Mask including headgear, and 1 CPAP filter).

3.4.4 Will give City employee's priority sleep services.

3.4.5 Must provide an at-home sleep study to employees not later than three days following referral.

3.4.6 Provide employee written and oral instruction on use of the equipment at time of pick up.

3.4.7 Coordinate with employee on a mutually agreed date of equipment return.

3.4.8 Provide CPAP as soon as possible following testing results. Contact City representative if supply chain issues become apparent.

3.5 **VENDOR** may provide an in-facility sleep study based upon extenuating circumstances if approved by CITY in advance.

3.6 **VENDOR** will attend internal meetings at a location determined by the City when requested or may present informational sessions to employees on sleep services when requested.

3.7 **VENDOR** shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.

IV. SUBCONTRACTING

4.1 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the **CITY**, shall be subject by its terms to each and every provision of this Contract. Compliance by subcontractors with this Contract shall be the responsibility of **VENDOR**. **CITY** shall in no event be obligated to any third party, including any subcontractor of **VENDOR**, for performance of services or payment of fees. Any references in this Contract to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the **CITY**.

- 4.2 Except as otherwise stated herein, **VENDOR** may not sell, assign, pledge, transfer or convey any interest in this Contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the **CITY**. As a condition of such consent, if such consent is granted, **VENDOR** shall remain liable for completion of the services outlined in this Contract in the event of default by the successor **VENDOR**, assignee, transferee or subcontractor.
- 4.3 Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **VENDOR** assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Contract, **CITY** may, at its option, cancel this Contract and all rights, titles and interest of **VENDOR** shall thereupon cease and terminate, in accordance with Article XII. Termination, notwithstanding any other remedy available to **CITY** under this Contract. The violation of this provision by **VENDOR** shall in no event release **VENDOR** from any obligation under the terms of this Contract, nor shall it relieve or release **VENDOR** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

V. PAYMENT FOR SERVICES

- 5.1 In consideration of the professional services to be rendered by **VENDOR**, the **CITY** shall pay an approximate total amount not to exceed \$360,000.00 according to the pricing below: These fees shall constitute full and complete payment for all services to be performed by **VENDOR** under this CONTRACT. This fee shall be payable within thirty (30) days at conclusion and validation of services and upon receipt of invoice submitted electronically to Accounts.Payable@sanantonio.gov with a copy to HR fiscal staff.

Home Sleep Test (HST) - **\$300.00**

In-Lab CPAP Titration Study - **\$900.00**

DME Setup for CPAP Therapy – (Includes 1 CPAP Machine with 1 CPAP Humidifier, 1 CPAP Humidifier water chamber, 1 Heated Tubing, 1 Face Mask including headgear, and 1 CPAP filter. - **\$1,000.00**

* **CITY** agrees that when a **PATIENT** is referred to SLEEP LAB under the payment schedule above, **VENDOR** will not bill **PATIENT**'s insurance for these services.

- 5.2 When **PATIENT** requires DME Supply Refills after the initial DME setup, **PATIENT** will be responsible for purchasing these at their own expense, using either their insurance or as self-pay. **CITY** will not be responsible for purchasing DME Supply Refills on behalf of **PATIENT**.
- 5.3 If **CITY** requests that **PATIENT**'s insurance be billed for Sleep Study Services or DME Setup, this request must be made prior to the performance of the sleep study or dispensing of the DME. **CITY** agrees that if insurance is billed for any services rendered to **PATIENT**, and **CITY** wishes to pay for any deductible, copayment or coinsurance amounts on behalf of the **PATIENT**, the payment schedule will not apply and the

insurance company's allowed amounts per the contract between the insurance company and the SLEEP LAB prevail.

- 5.4 The **CITY** shall not be obligated or liable under this **CONTRACT** to any party, other than the **VENDOR** for payment of any monies or provision for any goods or services.

VI. CONFIDENTIAL WORK

- 6.1 To the extent permitted by law, no reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by the **VENDOR** under this **CONTRACT** shall be disclosed or made available to any individual or organization by the **VENDOR** without the express prior written approval of the **CITY**.
- 6.2 The **VENDOR** shall establish a method to secure the confidentiality of records and information that the **VENDOR** may have access to, in accordance with the applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting the **CITY'S** or its authorized representatives' right of access to records or other information under this **CONTRACT**.
- 6.3 If the **VENDOR** receives inquiries regarding documents within their possession pursuant to this **CONTRACT**, the **VENDOR** shall immediately forward such request to the **CITY** for disposition.

VII. OWNERSHIP OF DOCUMENTS

- 7.1 All media campaigns, creative, files, reports, information and other data given to, prepared or assembled by the **VENDOR** under this **CONTRACT**, and any other related documents or items shall become the sole property of the **CITY**. Such reports, information and other data shall be delivered at no cost to the **CITY** upon request or termination of this **CONTRACT** without restriction on future use. The **VENDOR** may make copies of any and all documents for its files, at its sole cost and expense. **VENDOR** retains ownership of any and all of its intellectual property rights that existed prior to the Effective Date including, but not limited to, all methods, concepts, designs, reports, programs, and templates.
- 7.2 The **VENDOR** shall retain all records owned by or to which the **CITY** has access to, for the retention periods set forth in the Texas Local Government Records Act.

VIII. NON-WAIVER

- 8.1 Unless otherwise specifically provided for in this Contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or

any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Contract shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

IX. INSURANCE REQUIREMENTS

- 9.1 No later than 30 days before the scheduled event, **VENDOR** must provide a completed Certificate(s) of Insurance to CITY's Human Resource's Department. The certificate must be:
- clearly labeled with the legal name of the event (Sleep Study Services) in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (**CITY** will not accept Memorandum of Insurance or Binders as proof of insurance);
 - properly endorsed and have the agent's signature, and phone number,
- 9.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. **CITY** shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY'S Human Resource's Department. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.
- 9.3 If **CITY** does not receive copies of insurance endorsement, then by executing this Agreement, **VENDOR** certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.
- 9.4 The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- 9.5 **VENDOR** shall obtain and maintain in full force and effect for the duration of this Agreement, at **VENDOR**'s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the **VENDOR** claims to be self-insured, they must provide a copy of their declaration page so the **CITY** can review their deductibles:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000 /\$1,000,000 /\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis)	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

9.6 **VENDOR** must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of **VENDOR** and provide a certificate of insurance and endorsement that names **VENDOR** and **CITY** as additional insureds. **VENDOR** shall provide **CITY** with subcontractor certificates and endorsements before the subcontractor starts work.

9.7 If a loss results in litigation, then the **CITY** is entitled, upon request and without expense to **CITY**, to receive copies of the policies, declaration page and all endorsements. **VENDOR** must comply with such requests within 10 days by submitting the requested insurance documents to the **CITY** at the following address:

City of San Antonio
Human Resources Department
100 W. Houston St.
San Antonio, Texas 78205

9.8 **VENDOR's** insurance policies must contain or be endorsed to contain the following provisions:

- Name **CITY** and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with **CITY**. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
 - Endorsement that the "other insurance" clause shall not apply to **CITY** where **CITY** is an additional insured shown on the policy. **CITY's** insurance is not applicable in the event of a claim.
 - **VENDOR** shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of **CITY**; and
 - Provide 30 days advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- 9.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, **VENDOR** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **VENDOR** performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 9.10 In addition to any other remedies **CITY** may have upon **VENDOR's** failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, **CITY** may order **VENDOR** to stop work and/or withhold any payment(s) which become due to **VENDOR** under this Agreement until **VENDOR** demonstrates compliance with requirements.
- 9.11 Nothing contained in this Agreement shall be construed as limiting the extent to which **VENDOR** may be held responsible for payments of damages to persons or property resulting from **VENDOR** or its subcontractors' performance of the work covered under this Agreement.
- 9.12 **VENDOR's** insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by **CITY** for liability arising out of operations under this Agreement.
- 9.13 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of **CITY** shall be limited to insurance coverage provided.
- 9.14 **VENDOR** and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

X. INDEMNITY

- 10.1 **VENDOR** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **VENDOR'S** activities under this **CONTRACT**, including any acts or omissions of **VENDOR**, any agent, officer, director, representative, employee, **VENDOR** or subcontractor of **VENDOR**, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this **CONTRACT**. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY** arising out of or related to its activities under this **CONTRACT**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 10.2 The provisions of this **INDEMNIFICATION** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 10.3 **VENDOR** shall advise the **CITY** in writing within 10 days of any claim or demand against the **CITY** or **VENDOR** known to **VENDOR** related to or arising out of **VENDOR'S** activities under this contract.

XI. INDEPENDENT CONTRACTOR

- 11.1 **VENDOR** covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of **CITY**; that **VENDOR** shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and **VENDORs**; that the doctrine of respondent superior shall not apply as between **CITY** and **VENDOR**, its officers, agents, employees, contractors, subcontractors and **VENDORs**, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between **CITY** and **VENDOR**. The parties hereto understand and agree that the **CITY** shall not be liable for any claims which may be asserted by any third party

occurring in connection with the services to be performed by the **VENDOR** under this Contract and that the **VENDOR** has no authority to bind the **CITY**.

XII. TERMINATION

- 12.1 For purposes of this CONTRACT, "termination" of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 12.2 **TERMINATION BY NOTICE:** This CONTRACT may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than 30 calendar days nor more than 90 calendar days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be 30 calendar days after receipt of the notice by the other party.
- 12.3 **TERMINATION BY LAW:** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, this CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 12.4 **EFFECT OF TERMINATION:** The period between notice of termination and the effective date of termination shall be used to affect an orderly transfer of records and funds, if any, from the **VENDOR** to the **CITY** or to any person or entity that the **CITY** may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at the **VENDOR'S** sole cost and expense.
- 12.5 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the **CITY**), the **VENDOR** shall submit to the **CITY**, its claim, in detail, for the monies owed by the **CITY** for services performed under this CONTRACT through the effective date of termination.

XIII. CONFLICT OF INTEREST

- 13.1 **VENDOR** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the **CITY** or any **CITY** agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the **CITY** or in the sale to the **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any

individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

- 13.2 **VENDOR** warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. **VENDOR** further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.
- 13.3 If at any time it shall be found that the person, firm or corporation to whom a CONTRACT has been awarded has, in presenting any proposal, colluded with any other party or parties, then the contract so awarded shall be voidable at CITY'S option, and **VENDOR** shall be liable to CITY for all loss or damage that CITY may suffer thereby.

XIV. NOTICE

- 14.1 Any notice required or permitted to be given under this CONTRACT shall be sufficient if given in writing and sent by Certified Mail, return receipt requested, postage prepaid to the CITY or to the **VENDOR** at the addresses set forth below or to any other address of which written notice of change is given:

CITY

**City of San Antonio
Human Resources Department
100 W. Houston Street, 9th Floor
San Antonio, Texas 78205**

VENDOR

**Oniro LLC.
10707 Milwaukee Ave.
Lubbock, Texas 79424**

XV. CAPTIONS

- 15.1 The captions to the various clauses of this CONTRACT are for convenience or reference purposes only and shall in no way limit, enlarge or alter the substance of the terms and conditions of this CONTRACT.

XVI. SUCCESSORS AND ASSIGNS

- 16.1 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, except as otherwise expressly provided for herein.

XVII. VENUE AND GOVERNING LAW

- 17.1 **THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 17.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Contract shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XVIII. ENTIRE AGREEMENT

- 18.1 This CONTRACT, including the Exhibits, embodies the final and entire agreement of the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the parties and relating to matters in this CONTRACT. No other agreements, verbal or otherwise, regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and executed by the parties hereto.

XIX. LEGAL AUTHORITY

- 19.1 The signer of this CONTRACT for the **VENDOR** represents, warrants, assures, and guarantees full legal authority to execute this CONTRACT on behalf of the **VENDOR** and to bind the **VENDOR** to all the terms, conditions, provisions and obligations herein contained.

XX. GENDER

- 20.1 Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include plural, unless the context otherwise requires.

XXI. NON-DISCRIMINATION

- 21.1 As a party to this contract, **VENDOR** understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XXII. SEVERABILITY

22.1 If any clause or provision of this CONTRACT is held invalid, illegal, or unenforceable under present or future federal, state or local laws, including, but not limited to, the City Charter, City Code or Ordinances of the City of San Antonio, Texas, then, and in that event, it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties hereto that in lieu of each clause or provision of this CONTRACT that is invalid, illegal or unenforceable, there be added as part of the CONTRACT, a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXIII. ACKNOWLEDGEMENT

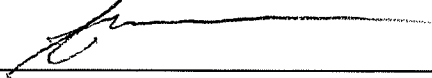
23.1 Each of the parties acknowledges that it has read this CONTRACT, understands its contents and executes this CONTRACT voluntarily.

EXECUTED by the **CITY** and by the **VENDOR**, acting through their duly authorized officials, as of the dates indicated below.

CITY OF SAN ANTONIO, TEXAS

ONIRO LLC.

Ben Gorzell
Chief Financial Officer



Allen Carson
Managing Member

Approved as to form:

Krista Cover
Assistant City Attorney