

Master Services Agreement Between Artworks Foundry LLC and City of Alameda

This Master Services Agreement is made as of [INSERT DATE] ("Effective Date") by and between Artworks Foundry, LLC ("Artworks Foundry"), a California Limited Liability Company having its principal place of business at 729 Heinz Ave STE 10, Berkeley, CA 94710, and City of Alameda, a California municipal corporation ("Client"), a charter municipality having its principal place of business at City of Alameda 2263 Santa Clara Avenue, Alameda, CA 94501 (collectively, the "Parties").

Client wishes to engage Artworks Foundry to provide the Services and Work Product (as defined below) described in one or more Work Orders (as defined below), and Artworks Foundry wishes to accept such engagement upon execution of such Work Order. Now, therefore, in consideration of the mutual covenants hereinafter set forth and for other valuable consideration, the Parties agree as follows:

1. Definitions

- 1.1 **Agreement** means the entire content of this Master Services Agreement, any attached Schedules, and any Work Orders, together with any exhibits, schedules, or attachments hereto.
- 1.2 **Change Order** means an agreement for services and deliverables beyond the scope set forth in the applicable WO. All Change Orders must be approved by both parties in writing.
- 1.3 **Client Materials** means all sculpture, specifications, drawings, information, photography, video, graphics, masks, maquettes, models, and other materials or data furnished by Client to Artworks Foundry for use in connection with the Work Product or Services.
- 1.4 **Confidential Information** means any nonpublic and/or proprietary information that: (i) if disclosed in writing, is labeled as "confidential" or "proprietary"; (ii) if disclosed orally, is designated confidential at disclosure; or (iii) by its nature and/or the circumstances of its disclosure, should be reasonably considered as confidential. Confidential Information shall not include information that (a) was known to the Recipient prior to the time of disclosure by the Discloser; (b) was in the public domain prior to the time of execution of this Agreement, or which comes into the public domain through no fault or breach of the Agreement by the Recipient; or (c) has been independently developed by the Recipient without reference to or use of the Confidential Information.
- 1.5 **Deliverable** means the Services and Work Product to be provided by Artworks Foundry to Client during a Project, as specified in the applicable Work Order.
- 1.6 **Force Majeure** shall mean damage or delay caused by Acts of God, acts or regulations or decrees of any government (de facto or de jure), natural phenomena such as earthquakes and floods, fires, riots, wars, freight embargoes, pandemics, lockouts, or other causes whether similar or dissimilar to those enumerated above unforeseeable and beyond the reasonable control of the pertaining parties and which prevent the total or partial carrying out of any obligation under any WO. The Covid pandemic is expressly excluded from the definition of a "pandemic" for purposes of this Agreement.
- 1.7 **Intellectual Property Rights** means, with respect to any thing, material, or work, all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (i) rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patent and industrial property rights; (v) other proprietary rights in Intellectual Property of every kind and nature; and (vi) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (i) through (v) of this definition.
- 1.8 **Preliminary Works** means all work (including, but not limited to, concepts, sketches, visual presentations, mock-ups, models, or other alternate or preliminary designs and documents) developed by Artworks Foundry

and which may or may not be shown and or delivered to Client for consideration but which do not form part of Artworks Foundry's Services and Work Product.

- 9.1 **Services** means the services specified in the applicable WO or otherwise performed by Artworks Foundry under this Agreement.
- 10.1 **Completion or Complete** means the date on which the Work Product or Services, or an agreed-upon portion of the Work Product or Services, is sufficiently complete in accordance with the WO or Change Order so that the Client can use the project or a portion thereof for its intended purposes.
- 11.1 **Work Order** (also referenced as "WO") means a writing, signed by the Parties, and made a part of this Agreement, setting forth all Services that Artworks Foundry agrees to perform for Client; all Work Product that Artworks Foundry agrees to create for, produce for, develop for, and sell to Client; and any other item (including preliminary and final work product) that Artworks Foundry agrees to prepare for or provide to the Client. Work Orders may be changed only through a Change Order or additional Work Order, in either case signed by all parties before such work begins.
- 12.1 **Work Product** means the work product specified in the applicable WO or otherwise provided by Artworks Foundry under this Agreement.
2. **Services and Work Product**
- 13.1 **Work Order.** All Services that Artworks Foundry agrees to perform for Client and all Work Product that Artworks Foundry agrees to create for, produce for, or provide to Client will be described in one or more WOs specifically referencing this Agreement. The WO must be completed before Artworks Foundry begins any Services or furnishes any Deliverables to Client, and no WO shall be effective unless executed by the authorized representatives of Artworks Foundry and Client. A separate WO will be required for each project. Each WO will become part of this Agreement by this reference when executed. A WO shall be governed by and subject to the provisions of this Agreement, except where and to the extent that a WO contains express language modifying the terms of this Agreement, in which case the modification shall apply to that WO only. All capitalized terms used and not expressly defined in the WO shall have the meanings given to them in this Agreement.
- 14.1 **Change Orders.** Change Orders will be issued for any real, material or substantive change in scope, scale, timing or other factor which impacts the cost to deliver the Work Product or Services on the established timeline. Client agrees not to unreasonably withhold any such approval. Change Orders must be accepted by both parties and approved in writing prior to commencement of work beyond the scope of or different from the applicable WO, but in no event will failure to document a Change Order be deemed to waive Artworks Foundry's right to seek payment for the changed scope. Change Orders will be invoiced in full at the time of execution unless the Change Order specifies otherwise.
- 15.1 **Client Materials Release:** Modification, alteration, damage, and loss of client-supplied materials is common and may be an unavoidable part of the molding, scanning, or 3D-printing process.
- 16.1 **Molds:** Artworks Foundry will not retain molds unless specified in the applicable WO. Molds are to be picked up no later than 30 days after the installation of the Deliverable. If Client wishes for Artworks to store their molds a rental agreement must be entered into no later than 30 days after completion of the Deliverable. Molds left at Artworks longer than 90 days after installation of the Deliverable will be considered abandoned and disposed of.
- 2.4 Client shall, at its own expense, have the right, at reasonable intervals throughout the project, during normal business hours, and upon 72 hours notice, to inspect Artwork Foundry's work and the progress being made in the work under the applicable WO. Client shall also have the right to have any qualified person of its choosing, at reasonable intervals throughout the project, during normal business hours, and upon 72 hours notice, make inspection and examination of such work in various stages of production, subject to Artworks Foundry's right to deny access to any person who, in Artworks Foundry's reasonable opinion, does not comply with Artworks Foundry's healthy, safety, or security policies. Client shall be responsible for promptly notifying Artworks Foundry in writing if there is any complaint as to the satisfactory accomplishment of the work as observed by Client or Client's representative.

- 17.12.5 Client acknowledges that it shall be responsible for performing the following in a reasonable and timely manner: a) Providing Client Materials in a timely manner and in suitable form to allow Artworks Foundry to provide the Services and Work Product specified in the applicable WO; b) where necessary, coordinating any decision-making with parties other than Artworks Foundry; c) final proof and/or review of Deliverables in a timely manner; d) payment of all invoices as they become due; and e) any and all client obligations specified in the applicable WO.

3. Invoices and Payment

- 18.1 Unless otherwise stated in the applicable WO, Artworks Foundry will invoice Client on a milestone basis. Each invoice is due and payable net 30 days after the invoice date, unless otherwise specified in the applicable WO.
- 19.1 Invoices submitted by Artworks Foundry to Client are deemed accepted and approved unless disputed by Client within ten (10) days after Client's receipt of the invoice. In the event Client disputes a portion of an invoice, Client will pay the undisputed portion in full while the dispute is being resolved, and Artworks Foundry's acceptance of such partial payment shall not waive any of its rights as to the remaining balance or in any way constitute accord and satisfaction. All such disputes must be in writing. Artworks Foundry at its sole and reasonable discretion may suspend performance of services and withhold delivery of materials until payment in full of all undisputed amounts more than fifteen (15) days past due. Artworks Foundry will not be liable for any damages, losses, or liabilities that may arise out of the suspension of performance and/or withholding of materials due to Client's non-payment.
- 20.1 Client will be responsible for payment of all taxes (other than taxes based on Artworks Foundry's income), including all applicable sales, use, or value added taxes, even if calculated or assessed subsequent to execution of the applicable WO. Client will also be responsible for payment of all fees, duties, tariffs, and other governmental charges (and any related penalties and interest) arising from the payment of fees to Artworks Foundry under this Agreement or from the delivery of any Deliverables to Client.

4. Timing/Acceptance/Completion

- 21.1 Timing. Artworks Foundry will undertake commercially reasonable efforts to perform the Services and provide the Work Product within the time(s) identified in the WO. Client agrees to review all Deliverables within the time identified for such reviews and to promptly either, (i) approve the Deliverables in writing or (ii) provide written comments and/or corrections sufficient to identify the Client's concerns, objections or corrections. Client acknowledges and agrees that Artworks Foundry's ability to meet any and all schedules is entirely dependent upon Client's prompt performance of its obligations to provide Client Materials and written approvals and/or instructions pursuant to the WO and that any delays in Client's performance or Changes in the Services or Deliverables requested by Client may delay delivery of the Services and/or Work Product. Any such delay caused by Client shall not constitute a breach of Artworks Foundry's obligations under this Agreement or the WO.
- 22.1 Inherent Qualities in the Work. Client acknowledges and agrees that reproduction of artwork by way of mold making, scanning, 3D printing, wax patterns, metal casting, assembly, and/or fabrication will incur changes to surface, dimensions, details, and alignment. Such changes are inherent to the process.
- 23.1 Acceptance. Client shall notify Artworks Foundry in writing and within five (5) business days of receipt or inspection of each Deliverable of any failure of such Deliverable to comply with the specifications set forth in the WO, or of any other objections Client has to such Deliverable. Any such notice shall be sufficient to identify with clarity any objection made or correction or change or demanded. Any and all objections, corrections, or changes shall be subject to the terms and conditions of this Agreement. In the absence of such notice from Client, the Deliverable shall be deemed accepted. Objections that do not prohibit Client from using the Work Product or a portion thereof for its intended purpose shall not relieve Client of payment obligations under section 3.
- 24.1 Completion. Artworks Foundry shall notify Client when the project specified in the applicable WO is Complete. In the event Client disputes whether the project is Complete, Client shall notify Artworks Foundry, in writing, within five (5) days of receipt of Artworks Foundry's notice of Completion. In the absence of such notice, Artworks Foundry shall prepare, and Client shall execute, a statement of Completion setting forth the date of Completion. Upon Completion of the project, Client shall make payment to Artworks Foundry of all

remaining amounts relating, as applicable, to the entire project or the completed portion of the project. Excepting installation or inspection, Client may not display or sell or otherwise use any portion of the project until such time as it has executed the statement of Completion. Client's use of any portion of the project in any manner other than installation or inspection shall operate as an acknowledgement of Completion.

5. Intellectual Property Rights and Licensing

25.1 Preliminary Works. Artworks Foundry retains all rights in and to all Preliminary Works. Client shall return all Preliminary Works to Artworks Foundry within thirty (30) days of completion of the Services and all rights in and to any Preliminary Works shall remain the exclusive property of Artworks Foundry.

26.1 Client Materials: Client Materials shall remain the sole property of Client, and Client shall be the sole owner of all rights in connection therewith.

6. Publicity/Accreditation/Promotion

Artworks Foundry retains and/or is granted certain publicity, accreditation, and promotion rights in the Services and Work Product, as follows:

27.1 Artworks Foundry retains the right to photograph, video, and otherwise document its role in the creation of the Artworks Foundry Services and Work Product and the Project, and to reproduce, publish and display such documentation in Artworks Foundry's portfolios and websites, and in galleries and other exhibits for the purposes of recognition of creative excellence or professional advancement, and to be credited with authorship of the Deliverables in connection with such uses. Such rights include the right to submit the documentation of the Artworks Foundry Services and Work Product to professional award competitions.

28.1 Either Party, subject to the other's reasonable written approval, may describe its role in relation to the Project and, if applicable, the Services provided to the other party on its website and in other promotional materials, and, if not expressly objected to, include a link to the other party's website;

29.1 Artworks Foundry may reference the Project, and Artworks Foundry's role in the creation of the Artworks Foundry Services and Work Product and the Project, in Artworks Foundry's own marketing and public relations.

7. Trade Secrets and Confidential Information

30.1 If Client receives Confidential Information from Artworks Foundry, it shall keep Confidential Information strictly confidential and not disclose such Confidential Information to any third party without the Artworks Foundry's prior written consent. Client shall treat such Confidential Information with the same degree of care that it treats its own Confidential Information, but in no event less than a reasonable degree of care. Client may only use the Confidential Information in connection with this Agreement and shall not use the Confidential Information for any other purpose whatsoever. Client may disclose the Confidential Information only to its employees, representatives, and consultants ("Representatives"), and then only on a strictly "need-to-know" basis. Client shall ensure that Representatives are bound by obligations no less extensive than those set out in this Agreement. Client shall be liable to Artworks Foundry pursuant to the provisions set forth in this Agreement for any breach by its Representatives.

31.1 In the event Client receives a request to release Confidential Information pursuant to a court order, subpoena, or other governmental authority, Client shall provide Artworks Foundry with prompt written notice in order to permit Artworks Foundry to either consent to the disclosure or seek a protective order or other appropriate remedy. Client shall limit the disclosure of Confidential Information to the greatest extent possible under the circumstances.

32.1 Survival; Equitable Relief: Client's confidentiality obligations under this Section 7 shall survive for five years following any termination or expiration of this Agreement, provided that confidentiality obligations with respect to Confidential Information constituting trade secrets shall continue for as long as such Confidential Information shall be eligible for trade secret protection. Client acknowledges that breach of this Section 7 may cause irreparable harm to Artworks Foundry. Therefore, in addition to any other remedies available to it, Artworks Foundry may obtain injunctive relief in the event of any breach or alleged breach of the confidentiality provisions of this Agreement without proving actual damages.

8. Term and Termination

- 33.1 This Agreement takes effect on the Effective Date specified above and continues unless terminated as provided for herein. The termination of this Agreement also terminates any then-outstanding WO.
- 34.1 Artworks Foundry may terminate this Agreement, or any WO executed pursuant to it, at any time, effective immediately upon notice to Client or upon any other effective date specified in the termination notice.
- 35.1 Termination for Cause: In addition to any remedies that may be provided in this Agreement, Artworks Foundry may terminate this Agreement with immediate effect upon written notice to Client, if Client: (i) fails to pay any amount when due under this Agreement and such failure continues for five days after Client's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these terms of this Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.
- 36.1 Notwithstanding anything to the contrary contained herein, upon the effective date of any termination of this Agreement, or any WO executed pursuant to it, Client shall immediately pay to Artworks Foundry, whether or not previously billed, any fees previously accrued and any expenses previously incurred as of that date.

9. Warranties

- 37.1 Artworks Foundry's Warranty: Artworks Foundry warrants that all Services and Work Product provided under this Agreement are in compliance with all specifications, requirements and terms of this Agreement (including any applicable WO), and are, as of the respective date of delivery, of merchantable quality, fit for its intended purpose, new, and free from material defects. Upon notification by Client during the Warranty Period of a defect in the Work Product, the Parties shall promptly enter into a discussion to reach a mutual agreement on the best solution, and Artworks Foundry shall, as soon as reasonably practicable, cure the defect to a standard consistent with professional conservation standards. Such remedy is Client's sole remedy under this Warranty. The Warranty Period is one year from release of the finished artwork.
- 38.1 Post-Warranty Repairs: Should Client notify Artworks Foundry of a defect in the Work Product after expiration of the Warranty Period, Artworks Foundry will endeavor to make or supervise repairs or restoration at its then-standard professional rates for material and labor, plus reimbursement of all reasonable expenses for travel, shipping, permits, and equipment rental.
- 39.1 Warranty Exclusion: Artworks Foundry shall have no obligation to correct any defect, damage, failure or other problems caused by the Work Product being subject to misuse, abuse, improper maintenance, accident, or disaster.
- 40.1 Patina: Notwithstanding the foregoing, Artworks Foundry makes no guarantees or warranties regarding the patina. Artworks Foundry recommends an annual maintenance program consisting of cleaning and re-application of a clear paste wax to preserve the original patina. Variations in the patina over time, however, are common and are to be expected. Artworks Foundry will perform patina repairs and re-application at its then-standard professional rates for material and labor, plus reimbursement of all reasonable expenses for travel, shipping, permits, and equipment rental.
- 41.1 EXCEPT AS EXPRESSLY PROVIDED HEREIN AND TO THE EXTENT PERMITTED BY LAW, THERE ARE NO WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED BY STATUTE, USAGE, CUSTOM OF THE TRADE OR OTHERWISE, WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED BY ARTWORKS FOUNDRY PURSUANT HERETO, INCLUDING BUT NOT LIMITED TO, WARRANTIES, CONDITIONS, OR REPRESENTATIONS OF WORKMANSHIP, MERCHANTABILITY, NON-INFRINGEMENT, MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR DURABILITY.
- 42.1 Client Representations and Warranty: Client represents and warrants that none of the Client Materials violate or infringe any patent, copyright, or trademark, or any trade secret or other proprietary right of a third party. Any breach of this section shall be deemed a material breach of this Agreement. Client shall indemnify and defend Artworks Foundry (including its officers, directors, management and employees) and shall hold it and them harmless from and against any and all claims, demands, causes of action, losses, liabilities and

expenses (including, without limitation, attorneys' fees) resulting or arising from any breach of its representations and warranties herein.

- 43.1 Equal Opportunity Employers: Each party represents and warrants to the other that it is an equal-opportunity employer, does not discriminate on the basis of age, race, creed, color, religion, sex, sexual orientation, national origin, disability, marital or veteran status or any other basis that is prohibited by law and will not so discriminate in conjunction with any product or service provided hereunder.

10. Indemnification/Limitation of Liability

- 44.1 By Artworks Foundry: Subject to the terms, conditions, express representations and warranties provided in this Agreement, Artworks Foundry agrees to indemnify, save and hold harmless Client (including its City Council, attorneys, members, officers, directors, employees, contractors and agents) (each, a "Client Indemnitee") from and against any and all third party Claims arising out of, or resulting from any breach by Artworks Foundry of any of its warranties, representations or obligations under this Agreement except to the extent that such Claims were caused by the negligence, willful or reckless misconduct of any Client Indemnitee. In such event, (a) Client must promptly notify Artworks Foundry in writing of the claim; (b) Artworks Foundry shall have sole control of the defense and all related settlement negotiations; and (c) Client shall provide Artworks Foundry with the assistance, information and authority necessary to perform Artworks Foundry's obligations under this section. Notwithstanding the foregoing, Artworks Foundry shall have no obligation to defend or otherwise indemnify Client for any claim or adverse finding of fact arising out of or due to Client Materials, any unauthorized content provided by Client, or the improper or illegal use of Deliverables or Artworks Foundry Services and Work Product.

- 45.1 Dispute Resolution 11.2 Mediation: Except as otherwise set forth below, the Parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement not resolved by negotiation shall be the subject of mediation before a mediator from the JAMS panel of neutrals, to be held in San Francisco. Either Party may commence the mediation process by providing to the other Party a written request for mediation, setting forth the subject of the dispute or the relief requested. The Parties will cooperate with one another in selecting a neutral and in scheduling the mediation proceedings. The Parties agree that they will participate in the mediation in good faith and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

- 46.1 Chooinstallation of the Deliverable.

- 11. Venue: This Agreement shall be construed and governed in accordance with the laws located in the State of California, and the venue of any dispute shall exclusively reside in either the Superior Court of California, Alameda County, or the United States District Court, Northern District of California.**

- 47.1 .

- 48.1 Attorney's Fees: In any litigation arising out of or related to this Agreement, the prevailing Party, if any, shall be entitled to the costs and attorneys' fees reasonably incurred in connection with the litigation.

12. General Terms

- 49.1 Cumulative Remedies: The rights and remedies of the Parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, by statute or otherwise, except in those cases where this Agreement or an WO specifies that a particular remedy is sole or exclusive. No single or partial exercise of any right or remedy with respect to one breach of this Agreement or any Order precludes the simultaneous or subsequent exercise of any other right or remedy with respect to the same or a different breach.

- 50.1 Entire Agreement: This Agreement, including any WO executed pursuant to it, constitutes the entire understanding and agreement of the Parties relating to the subject matter hereof. This Agreement supersedes all prior agreements, arrangements, representations and communications (whether oral or written) between the parties regarding such subject matter. Any representation, promise, or condition not specifically incorporated

herein shall not be binding on either party. Neither this Agreement nor any WO may be modified or amended in any respect, and no Change Order shall become effective, except by a writing signed by the authorized representatives of the Parties. No change or modification shall be implied or assumed.

- 51.1 Force Majeure: In the event of a Force Majeure situation, the Party being delayed thereby shall inform the other Party thereof as soon as possible but in any event within three (3) business days after the commencement of such Force Majeure situation and specify the nature of the Force Majeure situation as well as the estimated duration thereof. In the event the Force Majeure situation continues for a period of more than thirty (30) business days, then either Party is entitled to terminate any affected WO by simple notice in writing and without either party being liable for damages towards the other Party. If the affected Party does not wish to terminate the WO in accordance with the above, the respective Parties' rights and obligations will be suspended, and a new time schedule shall be agreed upon between the parties. The Covid pandemic is expressly excluded as a Force Majeure situation.
- 52.1 Survival: The obligations and provisions of Sections __ (Intellectual Property Rights and Licensing), __ (Publicity/Accreditation/Promotion After Project Is Made Public), __ (Trade Secrets and Confidential Information), __ (Warranties), __ (Indemnification/Limitation of Liability), __ (Dispute Resolution) will survive any expiration or termination of this Agreement, or any WO executed pursuant to it.
- 53.1 No Waiver: Waiver of any breach or failure to enforce any term of his Agreement will not be deemed a waiver of any breach or right to enforce which may thereafter occur. No waiver may be valid against any party hereto unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.
- 54.1 No Assignment: Client may not transfer or assign all or part of this Agreement without Artworks Foundry's prior written consent. Any assignment or transfer of this Agreement by Client without Artworks Foundry's prior consent shall be void and shall give rise to an immediate right to terminate this Agreement by Artworks Foundry. Subject to the foregoing, this Agreement and each and all of the provisions hereof bind and benefit the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.
- 55.1 No Third-Party Beneficiaries: This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 56.1 Notices: Any notice or demand or other communication required or permitted to be given under this Agreement or applicable Law shall be effective only if it is in writing and signed by the applicable Party, properly addressed, and either delivered in person, or by a recognized courier service, or by electronic mail with acknowledgement of receipt by the other Party, to the Parties at the addresses provided in this section. For purposes of complying with any provision in this Agreement or applicable Law that requires a "writing," such communication when digitally signed shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Artworks Foundry at:

729 Heinz Ave, STE 10
Berkeley, CA 94710
www.artworksfoundry.com
contracts@artworksfoundry.com
510 644 2735

To City of Alameda:

Notices shall be effective upon receipt. The notice address as provided herein may be changed by written notice given as provided above.

57. Relationship: The Parties are independent entities engaged in independent businesses, and neither party nor any agent or employee of either party is an agent or employee of the other. Nothing in this Agreement reserves to either party the right to control the other in the conduct of such party's employment or business, nor shall either party have the authority to make any promise, warranty, guarantee, or representation that will create any obligation or liability whatsoever, whether express or implied, on behalf of the other. This Agreement does not establish a joint venture or partnership, nor does it establish any fiduciary relationship between the Parties, and the performance of any obligations under this Agreement will not create such relationships.

58. Severability: In the event that any provision hereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms.

59. Counterparts: The parties may execute this Agreement in several counterparts, by facsimile or scanned electronic copies for via electronic signatures, each of which will constitute an original and all of which, when taken together will constitute one agreement.

60.1

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date written above.

Artworks Foundry, LLC

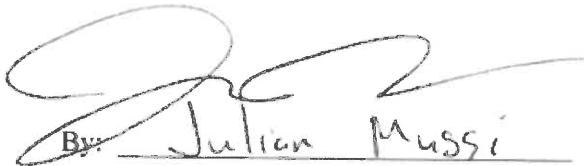
[NAME]

PURCHASER

CLIENT

Artworks Foundry, LLC

City of Alameda

By:  Julian Mussi

By: _____

NAME

Name: Nancy Bronstein

General Manager

Title: Interim City Manager

Date: 8/31/2022

Date: _____

Recommended By:

By:  Nicholas Luby, Fire Chief

Approved as to Form

By: _____

Mazarin A. Vakharia, Special Counsel

**Certification of Compliance
With the City of Alameda's Vaccination Requirement**

The City of Alameda ("City") requires all individuals who perform work for the City to be fully vaccinated¹ against COVID-19. All service providers and contractors for the City must sign the following statement certifying compliance with this requirement.

By signing below, I certify that all of our personnel who are performing work for the City are fully vaccinated against COVID-19. I also acknowledge that the City reserves the right to review any relevant records to demonstrate our compliance with this requirement.

I declare under penalty of perjury that the foregoing is true and correct.

Artworks Foundry, LLC.

Date: 8/21/2022


By: Julian Mussi
Its Owner/Partner

¹ For the purposes of this Certification of Compliance, an individual is considered to be fully vaccinated if two weeks have passed since their second dose in a 2-dose series (such as the Pfizer or Moderna vaccines) or if two weeks have passed since receiving their single-dose vaccine (such as Johnson & Johnson's Janssen vaccine).

Work Order No. 2243

	Client Project Representative	Artworks Foundry Project Representative
Name:	Chief Nick Luby	Julian Mussi
Phone:	510-867-8285	510-644-2735
Email:	nluby@alamedaca.gov	julian@artworksfoundry.com
Address:	1300 Park St.	729 Heinz Ave Space 10
	Alameda, CA 94501	Berkeley, CA 94710

This Work Order No.2243 ("WO No. 2243"), with an effective date of June 30, 2022 ("WO No. 2243 Effective Date"), is entered into by and between by Artworks Foundry, LLC ("Artworks Foundry") and The City of Alameda Fire Department ("Client"), a county government agency with principal place of business as noted below, under and pursuant to that certain Master Services Agreement by and between Artworks Foundry and Client with an effective date of June 30, 2022 (the "MSA"). Each entity may be referred to individually as a "Party" and together as the "Parties." Capitalized terms not otherwise defined in this Work Order will have the same meaning as set forth in the MSA.

The Parties hereby agree as follow:

1. SCOPE OF WORK

Artworks Foundry will provide all necessary resources to include but not be limited to labor, material, equipment, facilities, and management to accomplish the following Scope of Work:

Artworks Foundry will mold and cast the Central Figure, coat & helmet; digitally scan, 3D print and cast the badges, and fabricate the plinth with light, polished strip(s), lettering, rivets, and three plaques, assemble all pieces and install in Alameda, CA

Deliverables

Bronze Alameda Firefighter memorial consisting of sculpted central figure of Fire Fighter, head bowed, and a plinth with coat & helmet, plaques, badges, light, access panel, and a grate for the entry

Reference drawings/plans attached:

Plan View.jpg

Plinth.jpg

Sculpt.jpg

2. CLIENT RESPONSIBILITIES

As per Master Service Agreement

3. SCHEDULE: DELIVERABLES AND MILESTONES

Description	Due Date
TBD	

1. FEES AND EXPENSES

FABRICATED PLINTH		
Plinth, 6' h x 8'w x 2'd		\$76,000
Plaques (3)		\$7,500
Badges Scanning 3d scan, print, and cast		\$2,500
Badges Printing		\$1,000
Light, with amber Plexiglas		\$5,000
Bronze lettering - 5" high		\$9,000
Digital services	\$3,000 (non taxable)	
CENTRAL SCULPTURE FIGURE 66"		
Mold		\$4,500
Cast, Finished and Patinated		\$18,000
TURNOUT COAT & HELMET		
Mold		\$3,000
Cast, Finished and Patinated		\$7,000
FABRICATED BASE		
Fabricated Bronze Base - 1' x 3' x 3'		\$3,000
Donor plaque on base		\$1,500
Installation	\$5,000 (non taxable)	
Project Total		
		\$160,835.00
Previous Payment		\$ (4,500.00)
Project Balance		156,335.00

4. PAYMENT TERMS

Initial 50% deposit is due upon execution, balance is due upon completion.

Payment shall be made electronically as follows:

Bank Name: Wells Fargo

ABA/Routing #: 6017153237

Account Name: Artworks Foundry, LLC

Account Number: 121042882

SWIFT: WFBUIUS6WFFX

All payments shall reference project number: 2243

5. CONTINGENCY FEE

Contingency Fees

A contingency fee equal to 5% of the attached budget is included in this scope of work, above and beyond the estimated budget attached. In signing this WO, Client approves the Contingency Fee as described, and acknowledges Artworks Foundry's right to bill against that fee at its sole and reasonable discretion for any unforeseeable expenses arising from currently unknown project details.

Approved and Accepted By:

Artworks Foundry, LLC

City of Alameda Fire Department

By

By

Name Julian Mussi

Name Nicholas Luby

Title Owner/Partner

Title Fire Chief

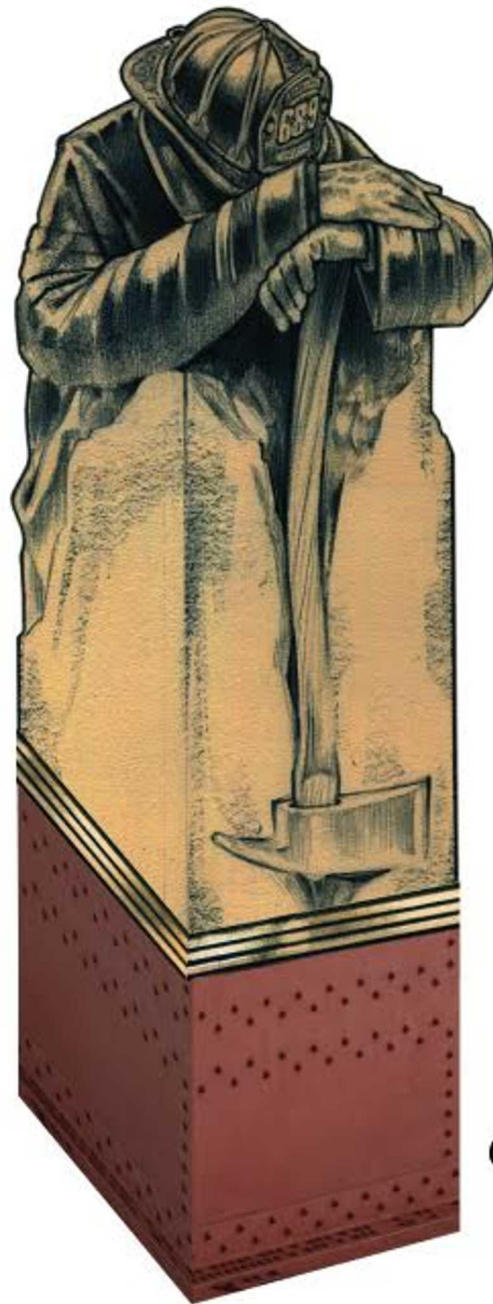
Date

9/6/2022

Date 9/6/2022

ALAMEDA FIRE DEPARTMENT
FIREFIGHTER MEMORIAL DESIGN

SCULPTURE DESIGN C



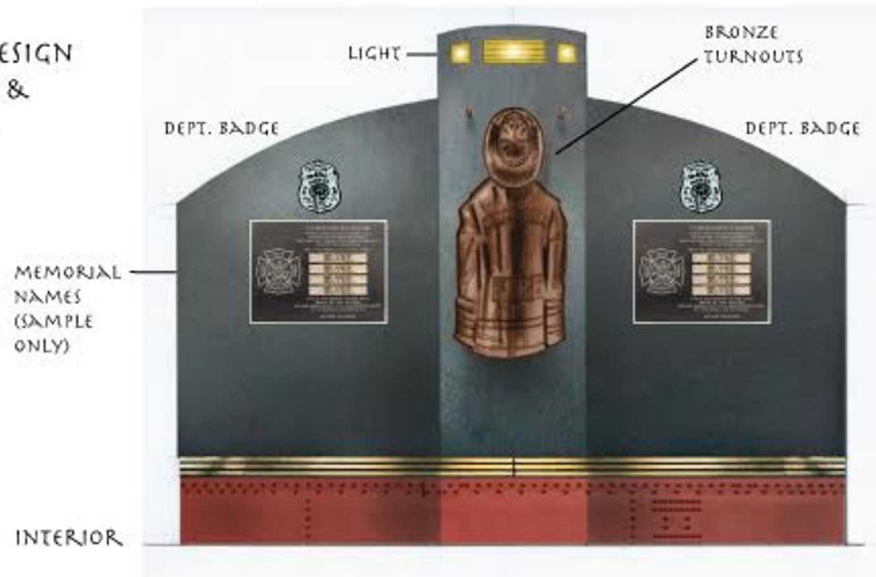
C

PREPARED BY NOBLE STUDIO • 10 MARCH, 2016



ALAMEDA FIRE DEPARTMENT FIREFIGHTER MEMORIAL DESIGN

REVISED
PLYNTH DESIGN
INTERIOR &
EXTERIOR



APPROXIMATE PLYNTH HEIGHT: 6' WIDTH: 8.5'

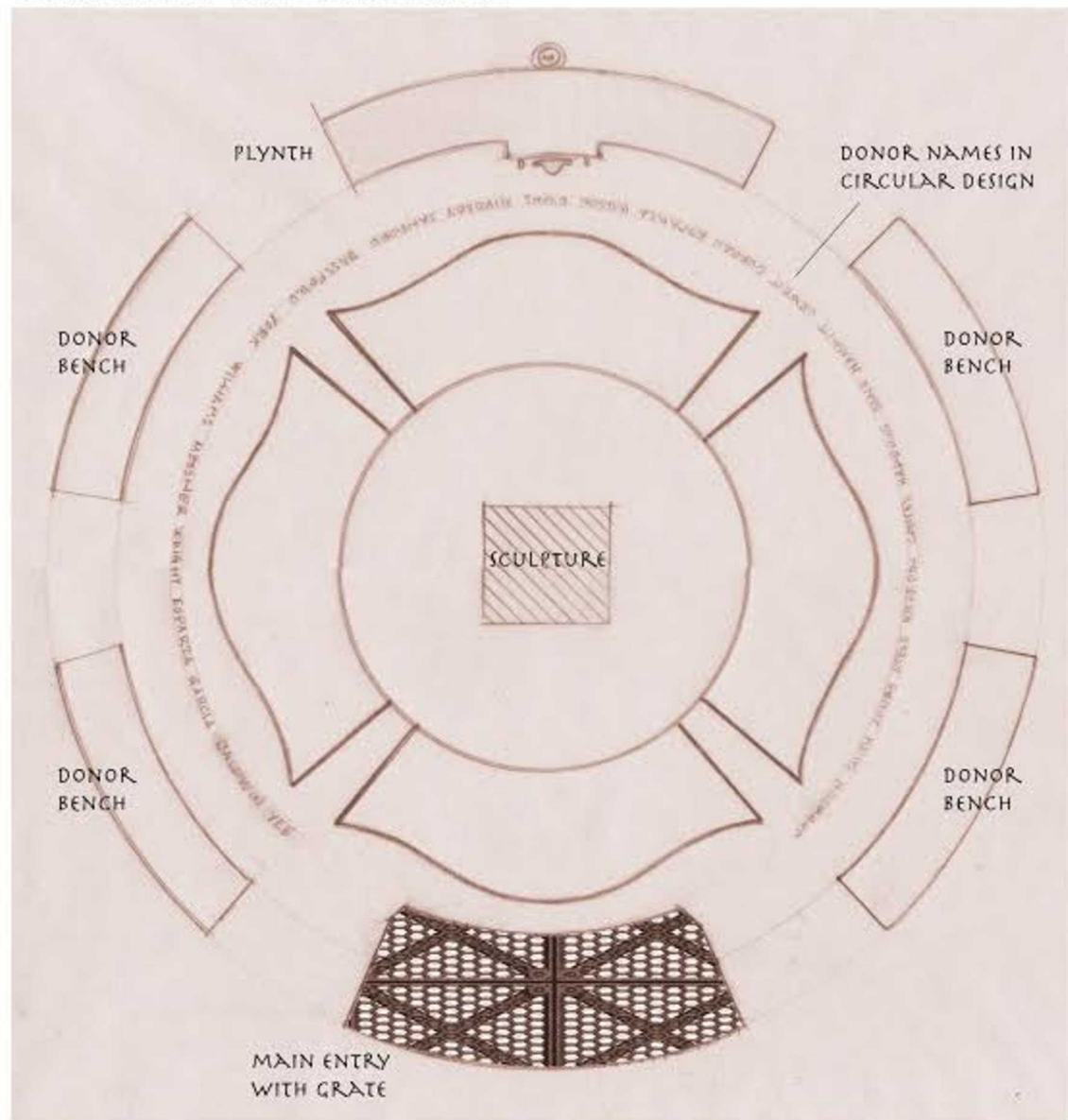


PREPARED BY NOBLE STUDIO • 10 MARCH, 2016



ALAMEDA FIRE DEPARTMENT FIREFIGHTER MEMORIAL DESIGN

OVERALL PLAN VIEW OF MEMORIAL



PREPARED BY NOBLE STUDIO • 10 MARCH, 2016





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/25/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh Affinity a division of Marsh USA Inc. P.O. Box 14404 Des Moines, IA 50306-9686	CONTACT NAME: Marsh Affinity	
	PHONE (A/C, No, Ext): 800-743-8130	FAX (A/C, No):
	E-MAIL ADDRESS: ADP TotalSource@marsh.com	
	INSURER(S) AFFORDING COVERAGE	
INSURED ADP TotalSource DE IV, Inc. 5800 Windward Parkway Alpharetta, GA 30005 I/C/F: Artworks Foundry, LLC 729 HEINZE AVE SPACE 10 Berkeley, CA 947100000	INSURER A: AIU Insurance Company	NAIC # 19399
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	WC 053419893 CA	07/01/2022	07/01/2023	PER STATUTE <input checked="" type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
All worksite employees working for Artworks Foundry, LLC paid under ADP TOTALSOURCE, INC.'s payroll, are covered under the above stated policy. 2243 Firefighter Memorial

8/30/2022 OK LKC

CERTIFICATE HOLDER

City of Alameda
1300 Park St Alameda, CA 94501

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
AUTHORIZED REPRESENTATIVE <i>Jo Phillips</i>

ACORD 25 (2016/03)

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/23/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Horton Group 10320 Orland Parkway Orland Park IL 60467	CONTACT NAME: PHONE (A/C, No, Ext): 708-845-3000 E-MAIL ADDRESS: certificates@thehortongroup.com FAX (A/C, No):
INSURED Artworks Foundry, LLC 729 Heinz Ave Berkeley CA 94710	INSURER(S) AFFORDING COVERAGE INSURER A: The Travelers Indemnity Company of Connecticut INSURER B: The Travelers Property Casualty Insurance Company INSURER C: INSURER D: INSURER E: INSURER F:
	NAIC # 25682 25674

COVERAGES**CERTIFICATE NUMBER:** 1176871838**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		630-5T395413	5/20/2022	5/20/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		BA-5T39654A	5/20/2022	5/20/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0		CUP-5T435440	5/20/2022	5/20/2023	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Additional insured with respect to the general liability and auto liability only when required by written contract.

Additional Insured: City of Alameda its City Council, boards, commissions, officials, employees, agents, and volunteers

8/30/2022 OK LKC

CERTIFICATE HOLDER**CANCELLATION**City of Alameda
2263 Santa Clara Avenue
Alameda CA 94501

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT FOR MANUFACTURERS AND WHOLESALEERS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|--|--|
| <ul style="list-style-type: none"> A. Who Is An Insured – Unnamed Subsidiaries B. Who Is An Insured – Employees And Volunteer Workers – Bodily Injury To Co-Employees And Co-Volunteer Workers C. Who Is An Insured – Newly Acquired Or Formed Limited Liability Companies D. Blanket Additional Insured – Broad Form Vendors E. Blanket Additional Insured – Controlling Interest F. Blanket Additional Insured – Mortgagees, Assignees, Successors Or Receivers G. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Premises | <ul style="list-style-type: none"> H. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Operations I. Blanket Additional Insured – Grantors Of Franchises J. Incidental Medical Malpractice K. Medical Payments – Increased Limit L. Blanket Waiver Of Subrogation M. Contractual Liability – Railroads |
|--|--|

PROVISIONS

A. WHO IS AN INSURED – UNNAMED SUBSIDIARIES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a.** You are the sole owner of, or maintain an ownership interest of more than 50% in, such subsidiary on the first day of the policy period; and
- b.** Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal and advertising injury" caused by an offense committed:

- a.** Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b.** After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

For purposes of Paragraph 1. of Section II – Who Is An Insured, each such subsidiary will be deemed to be designated in the Declarations as:

- a.** A limited liability company;
- b.** An organization other than a partnership, joint venture or limited liability company; or
- c.** A trust;

as indicated in its name or the documents that govern its structure.

B. WHO IS AN INSURED – EMPLOYEES AND VOLUNTEER WORKERS – BODILY INJURY TO CO-EMPLOYEES AND CO-VOLUNTEER WORKERS

The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED**:

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" to a co-"employee" while in the course of the co-"employee's" employment by you or performing duties related to the conduct of your business, or to "bodily injury" to your other "volunteer workers" while performing duties related to the conduct of your business.

C. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED LIMITED LIABILITY COMPANIES

The following replaces Paragraph 3. of **SECTION II – WHO IS AN INSURED**:

3. Any organization you newly acquire or form, other than a partnership or joint venture, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only:
 - (1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or
 - (2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it;
 - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

For the purposes of Paragraph 1. of Section II – Who Is An Insured, each such organization will be deemed to be designated in the Declarations as:

- a. A limited liability company;
 - b. An organization, other than a partnership, joint venture or limited liability company; or
 - c. A trust;
- as indicated in its name or the documents that govern its structure.

D. BLANKET ADDITIONAL INSURED – BROAD FORM VENDORS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a vendor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Occurs subsequent to the signing of that contract or agreement; and
- b. Arises out of "your products" that are distributed or sold in the regular course of such vendor's business.

The insurance provided to such vendor is subject to the following provisions:

- a. The limits of insurance provided to such vendor will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
 - (1) Any express warranty not authorized by you or any distribution or sale for a purpose not authorized by you;
 - (2) Any change in "your products" made by such vendor;
 - (3) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (4) Any failure to make such inspections, adjustments, tests or servicing as vendors agree to perform or normally undertake to perform in the regular course of business, in connection with the distribution or sale of "your products";

- (5) Demonstration, installation, servicing or repair operations, except such operations performed at such vendor's premises in connection with the sale of "your products"; or
- (6) "Your products" that, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or on behalf of such vendor.

Coverage under this provision does not apply to:

- a. Any person or organization from whom you have acquired "your products", or any ingredient, part or container entering into, accompanying or containing such products; or
- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

E. BLANKET ADDITIONAL INSURED – CONTROLLING INTEREST

1. The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that has financial control of you is an insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" that arises out of:

- a. Such financial control; or
- b. Such person's or organization's ownership, maintenance or use of premises leased to or occupied by you.

The insurance provided to such person or organization does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

2. The following is added to Paragraph 4. of **SECTION II – WHO IS AN INSURED**:

This paragraph does not apply to any premises owner, manager or lessor that has financial control of you.

F. BLANKET ADDITIONAL INSURED – MORTGAGEES, ASSIGNEES, SUCCESSORS OR RECEIVERS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a mortgagee, assignee, successor or receiver and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to its

liability as mortgagee, assignee, successor or receiver for "bodily injury", "property damage" or "personal and advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement; and
- b. Arises out of the ownership, maintenance or use of the premises for which that mortgagee, assignee, successor or receiver is required under that contract or agreement to be included as an additional insured on this Coverage Part.

The insurance provided to such mortgagee, assignee, successor or receiver is subject to the following provisions:

- a. The limits of insurance provided to such mortgagee, assignee, successor or receiver will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such person or organization does not apply to:
 - (1) Any "bodily injury" or "property damage" that occurs, or any "personal and advertising injury" caused by an offense that is committed, after such contract or agreement is no longer in effect; or
 - (2) Any "bodily injury", "property damage" or "personal and advertising injury" arising out of any structural alterations, new construction or demolition operations performed by or on behalf of such mortgagee, assignee, successor or receiver.

G. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO PREMISES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to premises owned or occupied by, or rented or loaned to, you and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of the existence, ownership, use, maintenance, repair, construction, erection or removal of any of the following for which that governmental entity has

issued such permit or authorization: advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, elevators, street banners or decorations.

H. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO OPERATIONS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to operations performed by you or on your behalf and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of such operations.

The insurance provided to such governmental entity does not apply to:

- a. Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or
- b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

I. BLANKET ADDITIONAL INSURED – GRANTORS OF FRANCHISES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that grants a franchise to you is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of your operations in the franchise granted by that person or organization.

If a written contract or agreement exists between you and such additional insured, the limits of insurance provided to such insured will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

J. INCIDENTAL MEDICAL MALPRACTICE

1. The following replaces Paragraph **b.** of the definition of "occurrence" in the **DEFINITIONS** Section:

- b. An act or omission committed in providing or failing to provide "incidental medical

services", first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

2. The following replaces the last paragraph of Paragraph **2.a.(1)** of **SECTION II – WHO IS AN INSURED**:

Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a), (b), (c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide:

- (a) "Incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician, paramedic, athletic trainer, audiologist, dietician, nutritionist, occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or
 - (b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following replaces the last sentence of Paragraph **5.** of **SECTION III – LIMITS OF INSURANCE**:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph **2., Exclusions**, of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Sale Of Pharmaceuticals

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of, the insured.

5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

6. The following is added to Paragraph **4.b.**, **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph **2.a.(1)** of Section **II – Who Is An Insured**.

K. MEDICAL PAYMENTS – INCREASED LIMIT

The following replaces Paragraph **7.** of **SECTION III – LIMITS OF INSURANCE**:

- 7. Subject to Paragraph **5.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person, and will be the higher of:

- a. \$10,000; or
- b. The amount shown in the Declarations of this Coverage Part for Medical Expense Limit.

L. BLANKET WAIVER OF SUBROGATION

The following is added to Paragraph **8.**, **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed; subsequent to the execution of the contract or agreement.

M. CONTRACTUAL LIABILITY – RAILROADS

- 1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:
 - c. Any easement or license agreement;
- 2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.