

EXHIBIT 2

**AMENDMENT TO ANIMAL SHELTER OPERATOR AGREEMENT**

This Amendment of the Agreement, entered into this \_\_\_\_ day of \_\_\_\_\_ 2024, by and between the CITY OF ALAMEDA, a municipal corporation (hereinafter "the City") and FRIENDS OF THE ALAMEDA ANIMAL SHELTER, a California non-profit public benefit corporation, whose address is 1590 Fortmann Way, Alameda, CA 94501, (hereinafter "Provider"), is made with reference to the following:

RECITALS:

A. On July 1, 2021, an agreement was entered into by and between the City and Provider (hereinafter "Agreement") in an amount not to exceed \$11,574,639, for operations of the Alameda Animal Shelter

B. Whereas, the City Council authorized the City Manager to execute this Agreement as Amended on \_\_\_\_\_.

C. The City and Provider desire to modify the Agreement for Fiscal Year 2023-24 due to a significant increase in intake which caused costs for staff and medical care to increase.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. Paragraph 3, COMPENSATION TO PROVIDER, is modified to read as follows:

a. By the 7<sup>th</sup> day of each month, Provider shall submit to the City an invoice for the total amount of work done the previous month. Pricing and accounting of charges are to be according to the fee schedule as set forth in Exhibit B-1 and incorporated herein by this reference.

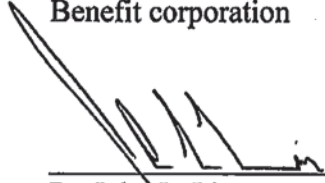
b. Provider shall be compensated for the services performed in accordance with the original contract. Additionally, Provider shall be compensated for the First Amendment, covering services performed during the period between July 2023 and June 30, 2024, at the rate set forth in Exhibit B-1 of the First Amendment. Additional compensation for services performed pursuant to the First Amendment shall not exceed \$186,000. Total Compensation for this Agreement shall not exceed \$11,760,639.

2. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

*Signatures on following page*

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed on the day and year first above written.

FRIENDS OF THE ALAMEDA  
ANIMAL SHELTER  
A California non-profit public  
Benefit corporation

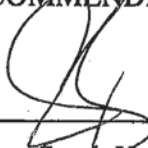


By John L. Lipp  
Title CEO

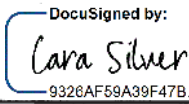
CITY OF ALAMEDA  
A Municipal Corporation

By: \_\_\_\_\_  
Jennifer Ott  
City Manager

RECOMMENDED FOR APPROVAL:

By:  \_\_\_\_\_  
Sarah Henry  
Communications & Legislative Affairs  
Officer

APPROVED AS TO FORM:  
City Attorney

By:  \_\_\_\_\_  
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Cara Silver  
Special Counsel

MEMORANDUM

Exhibit B-1

TO: Sarah Henry, Communications & Legislative Affairs Officer, City of Alameda  
FROM: John L. Lipp, FAAS CEO  
RE: Budget Adjustment for FAAS Fee for Service Contract – Updated  
DATE: May 8, 2024

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Thank you for the opportunity to submit this mid-year budget request to address the projected deficit of \$185,544 for FY 23/24 budget.

As we shared previously, the contract is not keeping pace with the true costs for core, state-mandated Animal Care services. This is the result of several factors including:

- General Inflation and the need for additional animal care staffing
- The increase of incoming animals - a 16% increase over the previous year and an increase of 37% over the same time period just two years ago (Table A)
- The need for equitable and competitive compensation; COLA are currently at 5% although budgeted wages for key, state-mandated positions are not competitive or equitable compared to other Bay Area shelters.
- An aging and out-of-date facility, and the condition of the animals coming into the shelter; both behaviorally and medically.

Table B shows this Fiscal Year's budget with a 14.4% deficit (\$185,544) against costs for core, state-mandated services. Although we are able to manage some costs, the biggest drivers are for core staffing levels/wages and shelter expenses for medical care.

Table C shows actual reimbursements to date. Through March 2024, we have billed actual costs (with no overhead as is typical in other government contracts) of \$965,433 or 87.5% YTD of the available funds.

FAAS continues to privately fundraise and significantly leverage public support to sustain innovative programs that help keep people and their pets stay together (and out of the shelter) and we provide exceptional care and positive outcomes for our community's lost, homeless and abandoned animals. The prevention-based programs actually save the city money by keeping animals out of the shelter system.

The opening of our privately-funded Animal Medical Services & Training Campus and the hiring of a FT Shelter Veterinarian will help to off-set rising costs of care by bringing these critically needed services in-house. <https://www.alamedaanimalshelter.org/about/fams/>




We look forward to discussing ways to close this year's projected deficit for state-mandated services, sustainably budget for the future, as well as plan for critically needed infrastructure projects at the main shelter. Thank you for your support as we work together to maximize our private-public partnership and continue the life-saving work that makes Alameda a model of human and animal support services.

Table A - Intake

July 2023 – March 2024

Total Animals = 733




Average Live Release Rate = 96.55%

	Live Intake	Adoptions	Transfers	Returned to Owner	Euthanasia	Died
<b>TOTALS</b>	<b>733</b>	<b>564</b>	<b>28</b>	<b>107</b>	<b>25</b>	<b>17</b>
 Dogs	297	173	13	87	9	4
 Cats	425	372	12	20	16	12
 Other	11	19	3	0	0	1
<b>Live Release Rate</b>	<b>96.55%</b>					

July 2022 – March 2023

Total Animals = 632

Average Live Release Rate = 96.47

<b>SHELTER STATS</b>						
	Live Intake	Adoptions	Transfers	Returned to Owner	Euthanasia	Died
<b>TOTALS</b>	<b>632</b>	<b>532</b>	<b>29</b>	<b>123</b>	<b>25</b>	<b>7</b>
 Dogs	262	137	11	79	8	1
 Cats	325	355	3	44	17	6
 Other	45	40	15	0	0	0
<b>Live Release Rate</b>	<b>96.47%</b>					

July 2021 – March 2022

Total Animals = 462

Average Live Release Rate = 96.09




<b>SHELTER STATS</b>						
	<b>Live Intake</b>	<b>Adoptions</b>	<b>Transfers</b>	<b>Returned to Owner</b>	<b>Euthanasia</b>	<b>Died</b>
<b>TOTALS</b>	<b>462</b>	<b>290</b>	<b>44</b>	<b>133</b>	<b>19</b>	<b>6</b>
 Dogs	183	76	10	101	10	0
 Cats	232	192	8	28	9	6
 Other	47	22	26	4	0	0
<b>Live Release Rate</b>	<b>96.09%</b>					

Table B – FAAS Annual Budget for State Mandated Services – FY 23/34

Expense	FY 23/24 City Contract  True Costs for State Mandated Services	FY 23/24 City Contract  Current Cap	Includes	Notes
Payroll – 61000	\$877,234	\$750,870	<p>City funded positions per True Costs budget: \$877,234</p> <p>Operations Director, FT                      Veterinary Assistant, FT                      Adoptions and Foster Services Manager, FT                      Volunteer Engagement Manager, FT                      Animal Care Manager, FT                      Senior Animal Care Team Lead, FT                      Animal Care Team Members, FT and PT (175 hrs/wk)                      Customer Service Associate(s), 2 FT</p> <p>Finance Manager is charged 25% of salary to contract</p> <p>ED/CEO is charged 50% of salary to contract</p> <p>FAAS funded positions per total budget: \$697,117</p> <p>Community Services Manager                      Community Services Coordinator/PT                      Outreach Manager                      Customer Care Assoc. - South Shore                      Communications Manager                      Fund Development Manager                      Thrifty Kitty - Manager                      Thrifty Kitty - Asst Manager                      Thrifty Kitty - Sr Customer Service Assoc.                      Thrifty Kitty - Customer Service Assoc.(2)</p>	<p>The biggest variable in managing an open-intake animal shelter is the number of animals coming in and the staffing levels required to care for those animals.</p> <p>As a nonprofit, FAAS is able to be flexible in our staffing models, but we have a core responsibility to maintain public safety, meet community standards for outcomes, and provide hands-on care 7 days/week, 365 days/year.</p> <p>This year’s budget showed a salary deficit of \$126,364 and, based on actuals through March 2024, it will be closer to \$181,627.</p> <p>FAAS fundraises and pay for additional positions including 50% of the CEO/Executive Director, the South Shore Adoptions/Outreach staff, the Healthy Pets/Healthy People staff that work closely with social services providers and address city priorities, as well as administrative and marketing/development positions.</p> <p>In addition, FAAS pays for the contracted Medical Director position. This will become a FT position in FY 24/25 at a projected base salary of \$150k.</p>

<b>Expense</b>	<b>FY 23/24 City Contract</b>	<b>FY 23/24 City Contract</b>	<b>Includes</b>	<b>Notes</b>
	<b>True Costs for State Mandated Services</b>	<b>Current Cap</b>		
Shelter Expenses – 62000	\$274,000	\$234,530	Includes: Contract Services, Spay/Neuter, Vet Services and Labs, Medications, Feed and Litter, Kennel Supplies, Microchips, Shelter Repairs	This year's budget showed a city deficit of \$39,470. Based on actuals through March 2024, we anticipate the actual deficit will be closer to \$32,674.
Occupancy – 63000	\$71,000	\$60,750	Includes: utilities, Janitorial, Telephone/Internet	This year's budget showed a city deficit of \$10,250. Based on actuals through March 2004, we anticipate coming in at the contracted cap amount.
Insurance – 64000	\$17,750	\$15,180	Includes: Liability and Property Insurance	This year's budget showed a city deficit of \$2,570. Based on actuals through March 2004, we anticipate coming in at the contracted cap amount.
Professional Services – 65000	\$45,750	\$39,150	Includes: 50% of Accounting/Audit and 75% of HR services and Payroll	This year's budget showed a city deficit of \$6,600. Based on actuals through March 2023, we anticipate coming in at the contracted cap amount.
Operating/Admin - 66100	\$2,000	\$1,710	Includes: Uniforms	Based on actuals through March 2024, we anticipate coming in at the contracted cap amount.
<b>TOTAL EXPENSES</b>	<b>\$1,287,734</b>	<b>\$1,102,190</b>		

Table C – City Contract YTD

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	YTD	City Contract	Actual Budget
Salaries	75,661.50	68,044.39	71,133.92	78,448.70	80,660.92	85,905.81	84,106.44	76,760.12	78,651.30				699,373.10	\$ 750,870.00	\$ 877,234.00
Shelter Expenses	39,362.74	25,642.75	21,691.67	14,751.14	22,251.31	11,957.19	23,597.85	26,004.50	15,144.67				200,403.82	\$ 234,530.00	\$ 274,000.00
Occupancy	2,987.18	3,916.58	2,806.49	3,844.45	4,338.31	5,409.77	5,521.38	7,313.13	5,599.36				41,736.65	\$ 60,750.00	\$ 71,000.00
Insurance	-	-	-	-	-	-	-	-	5,667.75				5,667.75	\$ 15,180.00	\$ 17,750.00
Professional Services	1,982.47	1,761.29	1,910.48	2,127.57	2,096.59	2,246.47	2,150.49	1,966.55	2,010.00				18,251.91	\$ 39,150.00	\$ 45,750.00
Operating/Admin	-	-	-	-	-	-	-	-	-				-	\$ 1,710.00	\$ 2,000.00
<b>TOTAL</b>	<b>119,993.89</b>	<b>99,365.01</b>	<b>97,542.56</b>	<b>99,171.86</b>	<b>109,347.13</b>	<b>105,519.24</b>	<b>115,376.16</b>	<b>112,044.30</b>	<b>107,073.08</b>				<b>965,433.23</b>	<b>\$ 1,102,190.00</b>	<b>\$ 1,287,734.00</b>
Invoice Date	8/12/2023	9/14/2023	10/27/2023	11/13/2023	12/14/2023	1/14/2024	2/20/2024	3/12/2024	4/11/2024						
Paid Date	8/31/2023	10/1/2023	11/10/2023	12/1/2023	1/5/2024	2/9/2024	3/15/2024	4/5/2024							

**BYLAWS OF  
FRIENDS OF THE ALAMEDA ANIMAL SHELTER  
AMENDED AND RESTATED AS OF AUGUST 17, 2022  
A California Nonprofit Public Benefit Corporation**

**ARTICLE I: NAME**

The name of this corporation shall be **Friends of the Alameda Animal Shelter**. The business of the corporation shall be conducted as Friends of the Alameda Animal Shelter or as FAAS.

**ARTICLE II: LOCATION**

The principal executive office and the principal office for the transaction of the business of FAAS may be established at any place or places within or without the State of California by resolution of the Board of Directors.

The Board of Directors may at any time establish branch or subordinate offices at any place or places where the Corporation is qualified to transact business.

**ARTICLE III: GENERAL AND SPECIFIC PURPOSES**

The general purpose for which FAAS is organized is to engage in any lawful act or activity for which a corporation may be organized under the Nonprofit Public Benefit Corporation Law of California, provided, however, nothing in this Article III shall be construed to authorize this Corporation to carry on any activity for the profit of its officers, Directors or other persons or to distribute any gains, profits or dividends to any of its officers, Directors or other persons as such. Furthermore, nothing in this Article shall be construed as allowing the Corporation to engage in any activity forbidden under Section 501(c)(3) of the Internal Revenue Code.

The specific purpose of FAAS shall include without limitation, to shelter and care for abandoned companion animals, find them new homes, and to prevent animal cruelty through education and community programs.

**ARTICLE IV: NONPARTISAN ACTIVITIES**

This Corporation has been formed under the California Nonprofit Public Benefit Corporation Law for the public purposes described above, and it shall be nonprofit and nonpartisan. No substantial part of the activities of the Corporation shall consist of the publication or dissemination of materials with the purpose of attempting to influence legislation, and the Corporation shall not participate or intervene in any political campaign on behalf of any candidate for public office or for or against any cause or measure being submitted to the people for a vote.

The Corporation shall not, except in any insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes described above in this section.

## **ARTICLE V: DIRECTORS**

5.1 Powers and Duties. Subject to the provisions of the California Nonprofit Corporation Law, the business and affairs of FAAS shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board of Directors. The Board may delegate the management of the activities of the Corporation to any person or persons, or committee however composed, provided that the activities and affairs of the Corporation be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

5.2 Qualification. Any individual who lives or works in the City of Alameda may serve as a director. Consideration may be given by the Board for nominations for qualified candidates not residing or working in Alameda.

5.3 Number. The Board of Directors shall consist of not less than 5 positions nor more than 15 positions, the exact number of Directors to be fixed by resolution of the Board.

5.4 Terms. The term of office for each director shall be two (2) years, commencing on the 1st day of July of the year they are first elected. A new director elected to fill a vacancy on the board shall serve for the remainder of the term of the new director's predecessor. A director may not serve more than four (4) full consecutive terms. An individual having served four (4) full consecutive terms as a director may not be elected or appointed to the board until one (1) year has elapsed since last having served as a director.

5.5 Restriction on "Interested Persons." Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement of expenses, as may be determined by resolution of the Board of Directors to be just and reasonable. Directors may be compensated for rendering services to the Corporation in a capacity other than a Director, provided such compensation is reasonable and further provided that not more than forty-nine percent (49%) of the persons serving as Directors may be "interested persons," as defined in Section 5277 of the California Nonprofit Public Benefit Corporation Law or any successor provision. "Interested Persons" means:

- [a] Any person currently being compensated by FAAS for services rendered to it within the previous twelve (12) months, whether as a full or part-time officer or other employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a Director as Director; or

(b) Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

5.6 Meetings. Regular meetings of the Board of Directors may be held at any place within the State of California that has been designated from time to time by resolution of the Board. In the absence of such designation, regular meetings shall be held at the principal executive office of the Corporation.

Special meetings of the Board of Directors for any purpose may be called at any time by the President. Special meetings shall be held at any place within the State of California that has been designated in the notice of the meeting or, if not stated in the notice, or if there is no notice, at the principal executive office of the Corporation. Notwithstanding the above provisions of this Section, a regular or special meeting of the Board of Directors may be held at any place consented to in writing by all the members of the Board of Directors, either before or after the meeting. If consents are given, they shall be filed with the minutes of the meeting.

Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all Directors participating in the meeting can hear one another, and all such Directors shall be deemed to be present in person at such meeting.

5.7 Annual Meeting. The annual meeting of the corporation and the board of directors shall be held in the final month of the corporation's fiscal year.

5.8 Waiver of Notice. Notice of a meeting need not be given to any director who signs the minutes of the meeting or signs a waiver of notice of the meeting. A director who attends a meeting and does not protest the lack of notice, waives any required notice to the director of the meeting.

5.9 Number of Meetings. The Board of Directors shall meet a minimum of 6 regular meetings per year and may set a specified time and place for its regular meetings. Once the Board of Directors sets the time for regular meetings, each Director shall receive notice, of the time and place that regular meetings shall be held. Subsequent to such notice, regular meetings shall be held without call. If the Board of Directors changes the time and place of regular meetings, each Director shall receive notice of the change.

5.10 Quorum. A majority of the directors shall constitute a quorum for the transaction of any business except adjournment. Whether or not a quorum is present, a majority of directors present may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of the adjournment shall be given to any directors who were not present at the adjournment. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken

is approved by at least a majority of the required quorum for that meeting.

5.11 Voting. Act of the Board. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board, subject to the more stringent requirements related to such things as approval of contracts or transactions between corporations with common directorships. A director who is present is deemed to have assented to such action unless the director's dissent or abstention from the action taken is entered in the minutes.

5.12 Action Without Meeting. Any action that a board of directors is permitted to take may be taken by email. If all directors consent to take action without a meeting, the affirmative vote of the number of directors that would be necessary to take action at a meeting is the same number to take action without a meeting. All such consents shall be confirmed with the minutes of the proceedings of the board at the meeting following the vote taken.

5.13 Removal. Directors may be removed without cause by a simple majority of Directors then in office.

5.14 Resignations. Except as provide in this paragraph, any Director may resign, which resignation shall be effective on giving written notice to the President, the Secretary, or the Board of Directors, unless the notice specifies a later time for the resignation to become effective. No Director may resign if the Corporation would then be left without a duly elected Director or Directors in charge of its affairs, except upon notice to the Attorney General.

5.15 Vacancies. Vacancies on the board may be filled by approval of the board.

5.16 Rights of Inspection. Every director shall have the absolute right at any reasonable time to inspect the books, records and documents of the corporation for a purpose reasonably related to that person's interest as a director.

5.17 Compensation. Directors will not receive compensation for their service on the board.

## **ARTICLE VI: COMMITTEES**

### **Committees of Directors.**

The Board of Directors may, by resolution adopted by a majority of the Directors then in office, create one or more committees, including an executive committee, each consisting of two or more Directors, to serve at the discretion of the Board. Any committee, to the extent provided in the resolution of the Board, shall have all the authority of the Board, except that no committee, regardless of Board resolution, may:

- (a) Fill vacancies on the Board of Directors or in any committee which has the authority of the Board;
- (b) Fix compensation of the Directors for serving on the Board or on any committee;
- (c) Amend or repeal Bylaws or adopt new Bylaws;
- (d) Amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable;
- (e) Appoint any other committees of the Board of Directors or the members of these committees;
- (f) Approve any transaction (1) between the Corporation and one or more of its Directors or (2) between the Corporation or any entity in which one or more of its Directors have a material financial interest; or
- (g) Expend corporate funds to support a nominee for Director after more persons have been nominated than can be elected.

The Board of Directors may, at any time, revoke or modify any or all of the authority so delegated to a committee, increase or decrease but not below two (2) the number of its members, and fill vacancies therein from the members of the Board.

#### **ARTICLE VII: OFFICERS**

7.1 Number. The officers of this corporation shall be the chief executive officer, the Chair of the Board, the vice president, the secretary and the treasurer. Any number of offices may be held by the same person, except that neither the Secretary nor the Treasurer may serve concurrently as the President.

7.2 Election of Officers. The Officers shall be elected at the annual meeting. The officers of the Corporation shall be chosen by the Board of Directors, and each shall serve for a one-year term, at the discretion of the Board. Officers may serve up to three consecutive terms.

7.3 Removal of Officers. Any officer may be removed, with or without cause, by the Board of Directors with a majority vote, at any regular or special meeting of the Board, or at the annual meeting of the Corporation.

7.4 Resignation of Officers. Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to

make it effective. Any resignation is without prejudice to the rights, if any of the Corporation under any contract to which the officer is a party.

7.5 Officer Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office.

7.6 Powers and Duties of the Officers:

a. Chief Executive Officer. Subject to such supervisory powers as the board may give to the chair of the board, if any, the chief executive officer shall be the general manager of the corporation. The chief executive officer shall see that all orders and resolutions of the board are carried out. The chief executive officer shall have such other powers and duties as the board or the Bylaws may require. The Chief Executive Officer may also be known as the Executive Director.

b. Chair of the Board. The Chair of the Board shall preside at all board meeting and the annual meeting. The Chair of the Board shall exercise and perform such other powers and duties as the board may assign from time to time.

c. Vice President. The vice president shall act on behalf of the Chair of the Board in the event of the Chair's illness or absence including presiding at meetings.

d. Secretary. The secretary shall attend all board and annual meetings and keep minutes of the meetings in a book to be kept for that purpose. The secretary shall keep that book, along with the articles of incorporation and Bylaws, at the principal office of the corporation or at such other place as the board may direct. The minutes shall include the time and place of the meeting; whether the meeting was annual, general, or special; the notice given; a record of all votes and actions; and who was present. The secretary shall give or cause to be given notice of all meetings of the board. The secretary shall have such other powers and duties as the board or the Bylaws may require.

e. Treasurer. The treasurer shall keep and maintain, or cause to be kept and maintained, adequate and accurate books and accounts of the corporation's properties and transactions. The treasurer shall give to the directors such financial statements and reports as are required by law, by these Bylaws or by the board. The books of account shall be open to inspection by any director at all reasonable times.

The treasurer shall (i) deposit or cause to be deposited all money and other valuables in the name and to the credit of the corporation with such

depositories as the board may designate; (ii) disburse the corporation's funds as the board may order; (iii) render to the president and the board, when requested, an account of all transactions and of the financial condition of the corporation; and (iv) have such other powers and perform such other duties as the board or Bylaws may require.

#### **ARTICLE VIII: MEMBERSHIP**

This Corporation shall have no members.

#### **ARTICLE IX: INDEMNIFICATION**

The corporation shall, to the extent legally permissible, indemnify each person who may serve or who has served at any time as an officer, director, or employee of the corporation against all expenses and liabilities, including, without limitation, counsel fees, judgments, fines, excise taxes, penalties and settlement payments, reasonably incurred by or imposed upon such person in connection with any threatened, pending or completed action, suit or proceeding in which he or she may become involved by reason of his or her service in such capacity; provided that no indemnification shall be provided for any such person with respect to any matter as to which he or she shall have been finally adjudicated in any proceeding not to have acted in good faith in the reasonable belief that such action was in the best interests of the corporation; and further provided that any compromise or settlement payment shall be approved by a majority vote of a quorum of directors who are not at that time parties to the proceeding.

The indemnification provided hereunder shall inure to the benefit of the heirs, executors and administrators of persons entitled to indemnification hereunder. The right of indemnification under this Article shall be in addition to and not exclusive of all other rights to which any person may be entitled.

No amendment or repeal of the provisions of this Article which adversely affects the right of an indemnified person under this Article shall apply to such person with respect to those acts or omissions which occurred at any time prior to such amendment or repeal, unless such amendment or repeal was voted by or was made with the written consent of such indemnified person.

This Article constitutes a contract between the corporation and the indemnified officers, directors, and employees. No amendment or repeal of the provisions of this Article which adversely affects the right of an indemnified officer, director, or employee under this Article shall apply to such officer, director, or employee with respect to those acts or omissions which occurred at any time prior to such amendment or repeal.

#### **ARTICLE X: CORPORATE ACTIONS**

10.1 Contracts. The Board of Directors, except as otherwise provided in these Bylaws, may by resolution authorize any officer or the chief executive officer of FAAS to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

10.2 Loans. No loans shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by a majority of the Board of Directors.

10.3 Checks, Drafts. All checks and other negotiable instruments of the corporation shall be signed by the Chief Executive Officer or approved Board officers and shall be authorized, through the approval of the annual budget, by the board of directors. Any check for an amount exceeding \$5000 shall be signed by the Chief Executive Officer and one officer.

10.4 Deposits. All funds of the corporation not otherwise employed shall be promptly deposited to the credit of the corporation in a bank or other depository as the board of directors may authorize.

#### **ARTICLE XI: FISCAL YEAR**

The fiscal year of the corporation shall begin on July 1st and end on June 30th.

#### **ARTICLE XII: REQUIRED REPORTS**

The board of directors shall create an annual report within 180 days of the end of the fiscal year. The report shall contain financial statements, accomplishments and goals for the coming years.

#### **ARTICLE XIII: CONFLICT OF INTEREST AND COMPENSATION APPROVAL POLICIES**

For purposes of this provision, the term "interest" shall include personal interest, interest as director, officer, member, stockholder, shareholder, partner, manager, trustee or beneficiary of any concern and having an immediate family member who holds such an interest in any concern. The term "concern" shall mean any corporation, association, trust, partnership, limited liability entity, firm, person or other entity other than the organization.

No director or officer of the organization shall be disqualified from holding any office in the organization by reason of any interest in any concern. A director or officer of the organization shall not be disqualified from dealing, either as vendor, purchaser or otherwise, or contracting or entering into any other transaction with the organization

or with any entity of which the organization is an affiliate. No transaction of the organization shall be voidable by reason of the fact that any director or officer of the organization has an interest in the concern with which such transaction is entered into, provided:

- a) The interest of such officer or director is fully disclosed to the Board of directors.
- b) Such transaction is duly approved by the board of directors not so interested or connected as being in the best interests of the organization.
- c) Payments to the interested officer or director are reasonable and do not exceed fair market value.
- d) No interested officer or director may vote or lobby on the matter or be counted in determining the existence of a quorum at the meeting at which such transaction may be authorized.
- e) The minutes of meetings at which such votes are taken shall record such disclosure, abstention, and rationale for approval.

13.1 Compensation Approval Policies. When approving compensation for employees, contractors, and any other compensation contract or arrangement, the board shall also comply with the following additional requirements and procedures:

- a. The terms of compensation shall be approved by the board prior to the first payment of compensation.
- b. all members of the board who approve compensation arrangements must not have a conflict of interest with respect to the compensation arrangement.
- c. The board shall obtain and rely upon data on compensation paid by three comparable organizations in the same or similar communities for similar services.
- d. The terms of compensation and the basis for approving them shall be recorded in the minutes of the meeting of the board that approved the compensation.

#### **ARTICLE XIV: NOTICE**

Unless otherwise provided for in these Bylaws any notice required shall be in writing except that oral notice is effective if it is reasonable under the circumstances and not prohibited by the Charter or Bylaws.

## **ARTICLE XV: CONSTRUCTION AND DEFINITIONS**

Unless the contest otherwise requires, the general provisions, rules of construction and definitions contained in the General Provisions of the California Nonprofit Corporation Law and in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these Bylaws.

## **ARTICLE XVI: DISSOLUTION**

Upon the dissolution or winding up of FAAS, its assets remaining after payment, or provision for payment, of all debts and liabilities of FAAS shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable, scientific or educational purposes and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

## **ARTICLE XVII: AMENDMENT BY DIRECTORS**

The Board of Directors will review these Bylaws annually at their annual meeting.

The Board of Directors may adopt, amend or repeal Bylaws. Such power is subject to the following limitations:

(a) The Board of Directors may not amend Bylaw provisions fixing the authorized number of Directors or establishing procedures for the nomination or appointment of Directors other than by unanimous vote of all Directors.

(b) This Section may be amended only by the unanimous vote of all Directors.

## **CERTIFICATE OF SECRETARY**

I certify that I am the duly elected and acting Secretary of the Friends of the Alameda Animal Shelter, that these Bylaws consisting of ten (10) pages are the Amended and Restated Bylaws of this corporation as adopted by the Board of Directors on August 17, 2022; and that these Bylaws have not been amended or modified since that date.

IN WITNESS WHEREOF, I have set my hand this 17<sup>th</sup> day of August, 2022.

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Janet Davis, Secretary





## ARCH INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### COVERAGE EXTENSIONS

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This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

##### 1. Bail Bonds

Subparagraph **1.b.** under **Section I – Coverages, Supplementary Payments – Coverages A and B** is amended to read as follows:

- b.** Up to \$3,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

##### 2. Your Expenses

Subparagraph **1.d.** under **Section I – Coverages, Supplementary Payments – Coverages A and B** is amended to read as follows:

- d.** All reasonable expenses incurred by the insured at our request to assist in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.

##### 3. Damage to Borrowed Equipment

Paragraph **(4)** of **j. Damage to Property** in **2. Exclusions** under **Section I – Coverages, Coverage A – Bodily Injury and Property Damage Liability** is deleted with respect to equipment you borrow for use in your operations.

##### 4. Additional Insured

The following are added to **Section II – Who Is An Insured**:

###### a. Persons or Organizations – As Required By Contract

Any person or organization when you have agreed in writing in a contract or agreement that such person or organization is to be included on your policy as an additional insured. Such person or organization is only an insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- (1)** Your ongoing operations for such person(s) or organization(s);
- (2)** "Your products"; or
- (3)** Your use or maintenance of a premises you own, rent, lease, occupy or otherwise use with the permission of the owner, except those premises you lease from person(s) or organization(s) for which paragraph **4.b.** below applies.

###### b. Managers, Landlords or Lessors of Premises

Any person or organization from whom you lease premises when you have agreed in writing in a contract or agreement that such person or organization is to be included on your policy as an additional insured. Such person or organization is only an insured with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (1)** Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (2)** Structural alterations, new construction or demolition operations performed by or on behalf of such person(s) or organization(s).

### **c. Lessors of Leased Equipment**

Any person or organization from whom you lease equipment when you have agreed in writing in a contract or agreement that such person or organization is to be included on your policy as an additional insured. Such person or organization is only an insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

Coverage provided to the person(s) or organization(s) included as an insured in subparagraphs **4.a.**, **4.b.**, and **4.c.** above only applies if the written contract or agreement identified in subparagraphs **4.a.**, **4.b.**, and **4.c.** above is executed prior to the "bodily injury", "property damage", or "personal and advertising injury".

Coverage shall be primary and not contributory with respect to the person(s) or organization(s) included as an insured in subparagraphs **4.a.**, **4.b.**, and **4.c.** above. Any other insurance such person or organization has will be excess and not contributory with this insurance but this provision only applies if it is required in the written contract or agreement identified in subparagraphs **4.a.**, **4.b.**, and **4.c.** above.

### **5. Fellow Employee**

Subparagraphs **2.a.(1)(a)**, **2.a.(1)(b)** and **2.a.(1)(c)** under **Section II – Who Is An Insured** are deleted with respect to "bodily injury".

### **6. Newly Formed or Acquired Organizations**

Subparagraph **3.a** under **Section II – Who Is An Insured** is deleted and replaced by the following:

- a.** Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

### **7. Damage to Premises Rented to You – Limit Amendment**

Paragraph **6.** under **Section III – Limits of Insurance** is amended to read as follows:

- 6.** Subject to paragraph **5.** above, the most we will pay under Coverage **A** for damages because of "property damage" to any one premises while rented to you or temporarily occupied by you with the permission of the owner is \$1,000,000, unless a higher Damage to Premises Rented to You Limit is shown on the Declarations.

### **8. Medical Expense – Limit Amendment**

Paragraph **7.** under **Section III – Limits of Insurance** is amended to read as follows:

- 7.** Subject to paragraph **5.** above, the most we will pay under Coverage **C** for medical expenses because of "bodily injury" to any one person is \$10,000, unless a higher Medical Expense Limit is shown on the Declarations.

### **9. Duties in the Event of Occurrence, Offense, Claim, or Suit**

The following subparagraph **e.** is added to **2. Duties in the Event of Occurrence, Offense, Claim, or Suit** under **Section IV – Commercial General Liability Conditions**:

- e.** Knowledge of any "occurrence", offense, claim, or "suit" will be deemed knowledge by you only when such "occurrence", offense, claim, or "suit" is known to:
  - (1)** You, if you are an individual;
  - (2)** Any partner, if you are a partnership;
  - (3)** Any member, if you are a limited liability company;
  - (4)** An executive officer or insurance manager if you are a corporation; or
  - (5)** An "employee" or "volunteer worker" designated by you to give us notice of such "occurrence", offense, claim, or "suit".

## 10. Liberalization

If we revise this coverage form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

## 11. Mental Anguish

Paragraph 3. under **Section V - Definitions** is deleted and replaced by the following:

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

## BUSINESS AUTO COVERAGE FORM

Various provisions in this Policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this Policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

### SECTION I – COVERED AUTOS

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

#### A. Description Of Covered Auto Designation Symbols

Symbol	Description Of Covered Auto Designation Symbols	
1	Any "Auto"	
2	Owned "Autos" Only	Only those "autos" you own (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the Policy begins.
3	Owned Private Passenger "Autos" Only	Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the Policy begins.
4	Owned "Autos" Other Than Private Passenger "Autos" Only	Only those "autos" you own that are not of the private passenger type (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the Policy begins.
5	Owned "Autos" Subject To No-fault	Only those "autos" you own that are required to have no-fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the Policy begins provided they are required to have no-fault benefits in the state where they are licensed or principally garaged.
6	Owned "Autos" Subject To A Compulsory Uninsured Motorists Law	Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the Policy begins provided they are subject to the same state uninsured motorists requirement.
7	Specifically Described "Autos"	Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to any power unit described in Item Three).
8	Hired "Autos" Only	Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.
9	Non-owned "Autos" Only	Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households but only while used in your business or your personal affairs.

<b>19</b>	Mobile Equipment Subject To Compulsory Or Financial Responsibility Or Other Motor Vehicle Insurance Law Only	Only those "autos" that are land vehicles and that would qualify under the definition of "mobile equipment" under this Policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.
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**B. Owned Autos**

1. If Symbols **1, 2, 3, 4, 5, 6** or **19** are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire after the policy period begins of the type described for the remainder of the policy period.
2. But, if Symbol **7** is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire after the policy period begins will be a covered "auto" for that coverage only if:
  - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
  - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.
3. An "auto" that is leased or rented to you without a driver, under a written agreement for a continuous period of at least six months that requires you to provide primary insurance covering such "auto", will be considered a covered "auto" you own.

**C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos**

If Covered Autos Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Covered Autos Liability Coverage:

1. "Trailers" with a registered Gross Vehicle Weight Rating of 3,000 pounds or less designed primarily for travel on public roads.
2. "Mobile equipment" while being carried or towed by a covered "auto".
3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
  - a. Breakdown;

- b. Repair;
- c. Servicing;
- d. "Loss"; or
- e. Destruction.

**SECTION II – COVERED AUTOS LIABILITY COVERAGE**

**A. Coverage**

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Covered Autos Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

**1. Who Is An Insured**

The following are "insureds":

- a. You for any covered "auto".
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
  - (1) The owner or anyone else from whom you hire or borrow a covered "auto".

This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.

- (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
- (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
- (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company) or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
- (5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

- c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

## 2. Coverage Extensions

### a. Supplementary Payments

We will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All court costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".

- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

### b. Out-of-state Coverage Extensions

While a covered "auto" is away from the state where it is licensed, we will:

- (1) Increase the Limit of Insurance for Covered Autos Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

## B. Exclusions

This insurance does not apply to any of the following:

### 1. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

### 2. Contractual

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or

- b. That the "insured" would have in the absence of the contract or agreement.

### 3. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

### 4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

- a. An "employee" of the "insured" arising out of and in the course of:
  - (1) Employment by the "insured"; or
  - (2) Performing the duties related to the conduct of the "insured's" business; or
- b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. above.

This exclusion applies:

- (1) Whether the "insured" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

### 5. Fellow Employee

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph a. above.

### 6. Care, Custody Or Control

"Property damage" to or "covered pollution cost or expense" involving property owned or transported by the "insured" or in the "insured's" care, custody or control. But this exclusion does not apply to liability assumed under a sidetrack agreement.

### 7. Handling Of Property

"Bodily injury" or "property damage" resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by the "insured" for movement into or onto the covered "auto"; or
- b. After it is moved from the covered "auto" to the place where it is finally delivered by the "insured".

### 8. Movement Of Property By Mechanical Device

"Bodily injury" or "property damage" resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered "auto".

### 9. Operations

"Bodily injury" or "property damage" arising out of the operation of:

- a. Any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment"; or
- b. Machinery or equipment that is on, attached to or part of a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

### 10. Completed Operations

"Bodily injury" or "property damage" arising out of your work after that work has been completed or abandoned.

In this exclusion, your work means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in Paragraph a. or b. above.

Your work will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed;
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site; or

- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

#### 11. Pollution

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
  - (1) Being transported or towed by, handled or handled for movement into, onto or from the covered "auto";
  - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
  - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts if:

- (1) The "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment".

Paragraphs b. and c. above of this exclusion do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (a) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (b) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

#### 12. War

"Bodily injury" or "property damage" arising directly or indirectly out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

#### 13. Racing

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered "auto" is being prepared for such a contest or activity.

#### 14. Unmanned Aircraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance or use of "unmanned aircraft".

#### C. Limit Of Insurance

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined resulting from any one "accident" is the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations.

All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Medical Payments Coverage endorsement, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

### **SECTION III – PHYSICAL DAMAGE COVERAGE**

#### **A. Coverage**

1. We will pay for "loss" to a covered "auto" or its equipment under:

##### **a. Comprehensive Coverage**

From any cause except:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

##### **b. Specified Causes Of Loss Coverage**

Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".

##### **c. Collision Coverage**

Caused by:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

#### **2. Towing And Labor**

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered "auto" that is a private passenger type, light truck or medium truck is disabled. However, the labor must be performed at the place of disablement.

#### **3. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles**

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

#### **4. Coverage Extensions**

##### **a. Transportation Expenses**

We will pay up to \$30 per day, to a maximum of \$900, for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes Of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the Policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

##### **b. Loss Of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicates that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes of Loss only if the Declarations indicates that Specified Causes Of Loss Coverage is provided for any covered "auto"; or

- (3) Collision only if the Declarations indicates that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$30 per day, to a maximum of \$900.

## **B. Exclusions**

1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

### **a. Nuclear Hazard**

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

### **b. War Or Military Action**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

2. We will not pay for "loss" to any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such a contest or activity.

3. We will not pay for "loss" due and confined to:

- a. Wear and tear, freezing, mechanical or electrical breakdown.
- b. Blowouts, punctures or other road damage to tires.

This exclusion does not apply to such "loss" resulting from the total theft of a covered "auto".

4. We will not pay for "loss" to any of the following:

- a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.
- b. Any device designed or used to detect speed-measuring equipment, such as radar or laser detectors, and any jamming apparatus intended to elude or disrupt speed-measuring equipment.
- c. Any electronic equipment, without regard to whether this equipment is permanently installed, that reproduces, receives or transmits audio, visual or data signals.
- d. Any accessories used with the electronic equipment described in Paragraph c. above.

5. Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- a. Permanently installed in or upon the covered "auto";
- b. Removable from a housing unit which is permanently installed in or upon the covered "auto";
- c. An integral part of the same unit housing any electronic equipment described in Paragraphs a. and b. above; or
- d. Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

6. We will not pay for "loss" to a covered "auto" due to "diminution in value".

## **C. Limits Of Insurance**

1. The most we will pay for:

- a. "Loss" to any one covered "auto" is the lesser of:
  - (1) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
  - (2) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

b. All electronic equipment that reproduces, receives or transmits audio, visual or data signals in any one "loss" is \$1,000, if, at the time of "loss", such electronic equipment is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph **b.(1)** above; or
- (3) An integral part of such equipment as described in Paragraphs **b.(1)** and **b.(2)** above.

2. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
3. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

#### **D. Deductible**

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations prior to the application of the Limit Of Insurance, provided that:

1. The Comprehensive or Specified Causes Of Loss Coverage deductible applies only to "loss" caused by:
  - a. Theft or mischief or vandalism; or
  - b. All perils.
2. Regardless of the number of covered "autos" damaged or stolen, the maximum deductible applicable for all "loss" in any one event caused by:
  - a. Theft or mischief or vandalism; or
  - b. All perils,

will be equal to five times the highest deductible applicable to any one covered "auto" on the Policy for Comprehensive or Specified Causes Of Loss Coverage. The application of the highest deductible used to calculate the maximum deductible will be made regardless of which covered "autos" were damaged or stolen in the "loss".

## **SECTION IV – BUSINESS AUTO CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions:

### **A. Loss Conditions**

#### **1. Appraisal For Physical Damage Loss**

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

#### **2. Duties In The Event Of Accident, Claim, Suit Or Loss**

We have no duty to provide coverage under this Policy unless there has been full compliance with the following duties:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss". Include:
  - (1) How, when and where the "accident" or "loss" occurred;
  - (2) The "insured's" name and address; and
  - (3) To the extent possible, the names and addresses of any injured persons and witnesses.
- b. Additionally, you and any other involved "insured" must:
  - (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.
  - (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".

- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".
  - (4) Authorize us to obtain medical records or other pertinent information.
  - (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.
- c. If there is "loss" to a covered "auto" or its equipment, you must also do the following:
- (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.
  - (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.
  - (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.
  - (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

### 3. Legal Action Against Us

No one may bring a legal action against us under this Coverage Form until:

- a. There has been full compliance with all the terms of this Coverage Form; and
- b. Under Covered Autos Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this Policy to bring us into an action to determine the "insured's" liability.

### 4. Loss Payment – Physical Damage Coverages

At our option, we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

### 5. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

## B. General Conditions

### 1. Bankruptcy

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

### 2. Concealment, Misrepresentation Or Fraud

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured", at any time, intentionally conceals or misrepresents a material fact concerning:

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

### 3. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

### 4. No Benefit To Bailee – Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

### 5. Other Insurance

a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Covered Autos Liability Coverage this Coverage Form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own; or

- (2) Primary while it is connected to a covered "auto" you own.
- b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".
- c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Covered Autos Liability Coverage is primary for any liability assumed under an "insured contract".
- d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

**6. Premium Audit**

- a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this Policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.
- b. If this Policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the Policy.

**7. Policy Period, Coverage Territory**

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- (1) The United States of America;
- (2) The territories and possessions of the United States of America;
- (3) Puerto Rico;
- (4) Canada; and

- (5) Anywhere else in the world if a covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less,

provided that the "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada, or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

**8. Two Or More Coverage Forms Or Policies Issued By Us**

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us applies to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

**SECTION V – DEFINITIONS**

**A.** "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".

**B.** "Auto" means:

- 1. A land motor vehicle, "trailer" or semitrailer designed for travel on public roads; or
- 2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

**C.** "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these.

**D.** "Covered pollution cost or expense" means any cost or expense arising out of:

- 1. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

2. Any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
  - (1) Being transported or towed by, handled or handled for movement into, onto or from the covered "auto";
  - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
  - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraph 6.b. or 6.c. of the definition of "mobile equipment".

Paragraphs b. and c. above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (a) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
  - (b) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.
- E. "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".
  - F. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
  - G. "Insured" means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.
  - H. "Insured contract" means:
    - 1. A lease of premises;
    - 2. A sidetrack agreement;
    - 3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
    - 4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
    - 5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement; or

6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

An "insured contract" does not include that part of any contract or agreement:

- a. That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- b. That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
- c. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.

I. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

J. "Loss" means direct and accidental loss or damage.

K. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- 1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- 2. Vehicles maintained for use solely on or next to premises you own or rent;
- 3. Vehicles that travel on crawler treads;
- 4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - a. Power cranes, shovels, loaders, diggers or drills; or
  - b. Road construction or resurfacing equipment such as graders, scrapers or rollers;

5. Vehicles not described in Paragraph 1., 2., 3. or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

- a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well-servicing equipment; or
- b. Cherry pickers and similar devices used to raise or lower workers; or

6. Vehicles not described in Paragraph 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- a. Equipment designed primarily for:
  - (1) Snow removal;
  - (2) Road maintenance, but not construction or resurfacing; or
  - (3) Street cleaning;
- b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well-servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

L. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

M. "Property damage" means damage to or loss of use of tangible property.

N. "Suit" means a civil proceeding in which:

- 1. Damages because of "bodily injury" or "property damage"; or
- 2. A "covered pollution cost or expense"; to which this insurance applies, are alleged.

"Suit" includes:

- a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the "insured" must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the insured submits with our consent.

**O.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

**P.** "Trailer" includes semitrailer.

**Q.** "Unmanned aircraft" means an aircraft that is not:

1. Designed;
2. Manufactured; or
3. Modified after manufacture;

to be controlled directly by a person from within or on the aircraft.