

Document no. 21-D0789-1
12/15/2021 (15)

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: INNOVATE78 MARKETING

THIS AGREEMENT, dated December 15, 2021 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and JPW Communications, LLC, hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows: Marketing and communications activities to support the Innovate78 regional economic development initiative (Attachment A).
2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the City Engineer. The CONSULTANT shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the City Engineer. CONSULTANT shall be solely responsible for the performance of its employees, agents, and subcontractors under this Agreement, including the training of each employee regarding the rights and responsibilities of an employer and employee for any potential discrimination or harassment claim under state or federal law. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.
4. **LIABILITY INSURANCE.**

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4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2. CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 2,000,000
General Aggregate	\$ 4,000,000*

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence	\$ 2,000,000
General limit project specific aggregate	\$ 4,000,000

<u>Automobile Liability Insurance</u>	\$ 2,000,000
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*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

4.3. If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY'S Project Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

4.4. All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

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- 4.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 4.6 CONSULTANT shall provide thirty (30) days written notice to the CITY should any policy required by this Agreement be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing, at minimum, a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
5. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of Two Million Dollars (\$2,000,000.00).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

6. **CONSULTANT'S INDEMNIFICATION OF CITY.** To the greatest extent allowed by law (including, without limitation, California Civil Code section 2782.8), CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of CONSULTANT'S work, including the negligent acts, errors or omissions or wrongful acts or conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by

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this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees founded upon, resulting or arising from the conduct, tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

7. **OWNERSHIP OF DOCUMENTS.** All plans and specifications, including details, computations and other documents, prepared or provided by the CONSULTANT under this Agreement shall be the property of the CITY. CONSULTANT shall provide all such documents in electronic, editable format upon request by the CITY. The CITY agrees to hold the CONSULTANT free and harmless from any claim arising from any use, other than the purpose intended, of the plans and specifications and all preliminary sketches, schematics, preliminary plans, architectural perspective renderings, working drawings, including details, computation and other documents, prepared or provided by the CONSULTANT. CONSULTANT may retain a copy of all material produced under this Agreement for the purpose of documenting CONSULTANT's participation in this project.
8. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed \$100,000 per contract year. No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the CITY. CONSULTANT shall obtain approval by CITY prior to performing any work that results in incidental expenses to CITY. The five Innovate78 cities (Carlsbad, Escondido, Oceanside, San Marcos and Vista) will contribute an equal financial share of \$20,000 per city to compensate JPW Communications, with the City of Oceanside serving as contract manager, based on the terms set forth in the attached MOU.
9. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the Innovate78 cities within two years.
10. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed

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for this project and supersedes all prior negotiations, representations, or agreements.

11. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

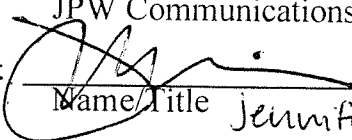
Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

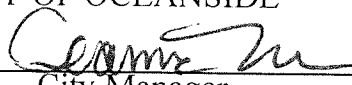
12. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

13. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days written notice to the other party. If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.

14. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

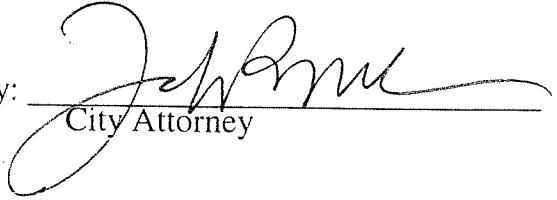
IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

JPW Communications, LLC
By: 
Name/Title Jennifer Windle
Date: 11/17/2021
Founder + President

CITY OF OCEANSIDE
By: 
City Manager
Date: 12/22/21

Innovate78 Marketing

APPROVED AS TO FORM:

By: 
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

On November 17th, 2021 before me,

Ivonne Martinez, Notary Public,
Here Insert Name and Title of the Officer

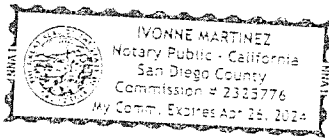
personally appeared _____

Jennifer Windle
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature _____

[Handwritten Signature]
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Professional Services Agreement

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Corporate Officer – Title(s): _____

Partner – Limited General

Partner – Limited General

Individual Attorney in Fact

Individual Attorney in Fact

Trustee Guardian or Conservator

Trustee Guardian or Conservator

Other: _____

Other: _____

Signer is Representing: _____

Signer is Representing: _____

Attachment A

Innovate78 Marketing Activities JPW Communications Scope of Work

The five cities along the 78 Corridor (Carlsbad, Escondido, Oceanside, San Marcos and Vista) wish to retain JPW Communications for marketing activities to support the Innovate78 regional economic development initiative. This work includes the following activities:

Research & Audit

Conduct audit of current key messages, outreach materials and target audiences; review survey results and other provided data in support of economic development opportunities. Leverage previous research to provide insights and recommendations. (Estimated 80 hours @ blended rate of \$150/hr): \$12,000

Strategic Planning

Update overarching marketing strategy to tactical level, defining operational objectives and marketing campaign objectives separately; define segmented target audiences; determine best strategies for reaching targets and recommend methods of campaign delivery with impression projections based on separate media budget. NOTE: Leveraging strategic plan previously developed by JPW. (Estimated 60 hours @ blended rate of \$150/hr): \$9,000

Program of Work

Develop three creative concepts for a long-term marketing effort, based on strategic framework and refine one selected concept. Concepts will include positioning statement, headlines and initial copywriting of a single outreach piece. Deliver complete media and marketing plan workflow for how creative will be delivered, what mediums will be used, projected placement performance with total impressions and cost per mille (thousand impressions). (NOTE: any approved media buys to be purchased directly. Media placed through JPW is subject to 20% placement fee.) (Estimated 120 hours @ blended rate of \$150/hr): \$18,000

Implementation Toolkit

Once concept is finalized, JPW will create an implementation toolkit with all needed collateral pieces which may include folder, one-sheets, brochure or pitchbook, presentation deck, digital ads, print ads, social media graphics and posts with all imagery and copywriting. Content development will include blogs, photography, video concept, scripting, scouting, storyboarding, on-site production, post-production, motion graphics, sound and final story packages for active distribution. Complete execution of marketing and media plan, placement of all media, posting of all social media content per content calendar, and administration of any direct digital campaigns including Google ads, Facebook ads and YouTube promotions. (Estimated 326 hours @ blended rate of \$150/hr): \$48,900

Attachment A

Innovate78 Marketing Activities
JPW Communications
Scope of Work

Evaluation

Provide recommended goals for measurement and key performance indicator standards for ongoing implementation. Set up analytics dashboard, provide monthly performance reports with insights and recommendations for ongoing optimization.

(Estimated 80 hours @ blended rate of \$150/hr): \$12,000

Total \$99,900

Policy Number:

Date Entered: 11/15/2021



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/15/2021

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 H. Linwood Insurance 4021 Layang Layang Circle Ste H Carlsbad, CA 92008	CONTACT NAME: Hadley Wood	
	PHONE (A/C, No, Ext): (760) 720-4632 FAX (A/C, No): (760) 720-0574 E-MAIL ADDRESS: hadley@hlinwood-insurance.com	
INSURED JPW Communications LLC 2710 Loker Avenue W #300 Carlsbad, CA 92010	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Hiscox Insurance Company	10200
	INSURER B: Topa Insurance Company	18031
	INSURER C: At Bay HSB Specialty Ins	14438
	INSURER D: Employers Preferred Insurance Co	10346
	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 (M/M/DD/YYYY)	POLICY EXP (M/M/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:			UDC-2220435-BOP	04/04/2021	04/04/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY			UDC-2220435-BOP	04/04/2021	04/04/2022	COMBINED SINGLE LIMIT (Ea accident) \$ Included BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			8271-3002-EX	04/04/2021	04/04/2022	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	EIG4675559-00	01/01/2021	01/01/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liability (E&O)			UDC-2220435-EO	04/04/2021	04/04/2022	Each Claim 1,000,000
C	Cyber Liability			6609930-01	06/01/2021	06/01/2022	Aggregate 1,000,000 Aggregate 2,000,000

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

Marketing & Communications

The City of Oceanside, its officers, agents and employees are additional insured to the above General Liability. Endorsements attached.

CERTIFICATE HOLDER City of Oceanside 300 N Coast Hwy Oceanside, CA 92054	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 Hadley Wood

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:
GENERAL LIABILITY COVERAGE PART

POLICY NUMBER: UDC-2220435-BOP	ENDORSEMENT EFFECTIVE : 04/04/2021
NAMED INSURED: JPW Communications LLC	COUNTER SIGNED BY: <i>Emile Lacayo</i>

SCHEDULE

Name of Person(s) or Organization(s): Any person or Organization that the named insured is obligated by virtue of a written contract or agreement to provide insurance such as is afforded by this policy.
Location(s): Various

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. **Section II – Who Is An Insured** is amended to include as an insured the person or organization shown in the Schedule, but only to the extent that the person or organization shown in the Schedule is held liable for your acts or omissions arising out of your ongoing operations performed for that insured.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than services, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. The words "you" and "your" refer to the Named Insured shown in the Declarations.

D. The following are added to **SECTION V – DEFINITIONS**:

"Your work" means work or operations performed by you or on your behalf; and materials, parts or equipment furnished in connection with such work or operations.

E. The following additional provisions apply to any entity that is an insured by the terms of this endorsement:

1. Primary Wording

With respect to the Third Party shown above, this insurance is primary and non-contributing. Any and all other valid and collectable insurance available to such Third Party in respect of work performed by you under written contractual agreements with said Third Party for loss covered by this policy, shall in no instance be considered as primary, co-insurance, or contributing insurance. Rather, any such other insurance shall be considered excess over and above the insurance provided by this policy.

2. Waiver of Subrogation

If required by written contract or agreement: We waive any right of recovery we may have against an entity that is an additional insured per the terms of this endorsement because of payments we make for injury or damage arising out of "you work" done under a contract with that person or organization.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

**WC 04 03 06
(Ed. 4-84)**

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT – CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium due for this endorsement shall be 2% of the California workers compensation premium otherwise due on such remuneration OR MP \$350.00.

Schedule

Any person or organization as required by written contract

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

01/01/2021 – 01/01/2022
Policy No. EIG4675559-00

Endorsement No. WC2021-01

Countersigned by _____