

**AGREEMENT FOR THE CREATION AND INSTALLATION OF A LIFE-SIZE
BRONZE CAST LAKE POMO FAMILY SCULPTURE**

This Agreement is made and entered into this 28th day of November, by and between the County of Lake, hereinafter referred to as "County", and Nordhammer Art Foundry, hereinafter referred to as "Contractor", collectively referred to as the "parties".

RECITALS

WHEREAS, County desires to install a life-size bronze sculpture of a Lake Pomo family on the grounds of the Historic Courthouse Museum in Lakeport; and

WHEREAS, in 2019 the County's Tribal Advisory Committee to the Lake County Museums (TAC) solicited proposals from five local and non-local skilled sculptors; and

WHEREAS, County's selection committee, comprised of the TAC and the non-profit organization Friends of the Historic Courthouse Museum, recommended the selection of Nordhammer Art Foundry for the creation of a concept design; and

WHEREAS, County hired Contractor in 2020 to prepare a concept design, which served as the basis for the County's successful grant application to the California Arts Council's Upstate California Creative Corps Program to commission the artist to create a life-size bronze sculpture based on the concept design; and

WHEREAS, Contractor has represented to County that Contractor has the necessary qualifications and staffing to perform the duties specified in this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and conditions herein, the County and the Contractor agree as follows:

1. **SERVICES**. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to County the Project Work described in Exhibit A – Scope of Project Work. In the event of a conflict between this Agreement and the Exhibits set forth below in paragraph 7 of this Agreement, this Agreement shall prevail.
2. **TERM**. This Agreement shall commence on the date listed above and shall terminate on June 30, 2025, unless earlier terminated as hereinafter provided or extended due to unforeseen circumstances such as supply chain issues. Any extension must be mutually agreed upon in accordance with the Modification provisions set forth in paragraph 5 hereinbelow.
3. **COMPENSATION**. Contractor has been selected by County to provide the services described hereunder in Exhibit "A" (Scope of Project Work), attached hereto. Notwithstanding any other provision in this Agreement to the contrary, the total maximum compensation to be paid for the satisfactory accomplishment and completion of all Project Work to be performed hereunder shall in no event exceed the sum of two hundred thirty thousand dollars (\$230,000).

The County shall compensate Contractor for services rendered, in accordance with the provisions set forth in Exhibit "B" (Fiscal Provisions), attached hereto, provided that Contractor is not in default under any provisions of this agreement. Compensation to Contractor is contingent upon appropriation of federal, state and County funds.

4. **TERMINATION.** This Agreement may be terminated by mutual consent of the parties or by County upon 30 days written notice to Contractor. In the event of non-appropriation of funds for the services provided under this Agreement, County may terminate this Agreement, without termination charge or other liability. Upon termination, Contractor shall be paid a prorated amount for the services provided up to the date of termination.

5. **MODIFICATION.** The Contract is the sum of all the Contract Documents. This Contract represents the entire and integrated agreement between the County and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by (1) a written amendment to the Contract signed by the Owner and the Contractor, (2) a Change Order, or (3) a written interpretation or clarification issued by the Lake County Public Services Director. Matters concerning scope of services which do not affect the compensation may be modified by mutual written consent of Contractor and County executed by Lake County Public Services Director

6. **FORCE MAJEURE.** Neither Party shall be liable for any delay or failure in performance of any part of this Lease where such failure or delay is caused by force majeure, as defined under the law controlling this Lease, including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, war, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, cable cuts, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions. In such event, the Party whose performance fails or is delayed shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such Party's obligations are related to the performance so interfered with). The Party whose performance fails or is delayed shall use its commercially reasonable efforts to avoid or remove the cause of nonperformance and both Parties shall proceed to perform with dispatch once the causes of the failure or the delay are removed or cease. Notwithstanding the preceding paragraph, no delay or other failure to perform shall be excused pursuant to this section by the acts or omissions of a Party's subcontractors, materialmen, suppliers, or other third persons providing products or services to such Party, unless such acts or omissions are themselves the product of a force majeure condition, and unless such delay or failure and the consequences thereof are beyond the reasonable control and without the fault or negligence of the Party claiming excusable delay or other failure to perform.

6. **NOTICES.** All notices between the parties shall be in writing addressed as follows:

County of Lake

Public Services Department

333 2nd Street

Lakeport, CA 95453

Attn: Lars Ewing, Public Services Director

Contractor

Nordhammer Art Foundry

3566 Big Valley Road

Kelseyville, CA 95451

Attn: Rolf Kricken, Artist

7. **EXHIBITS.** The Agreement Exhibits, as listed below, are incorporated herein by reference:

Exhibit A – Scope of Services

Exhibit B – Fiscal Provisions

Exhibit C – Compliance Provisions

Exhibit D - Final Concept Drawing and completed Maquette and
Nordhammer description of artwork to be created

8. **TERMS AND CONDITIONS.** Contractor warrants that it will comply with all terms and conditions of this Agreement and Exhibits, and all other applicable federal, state and local laws, regulations and policies.

9. **INTEGRATION.** This Agreement shall be governed by the laws of the State of California. This Agreement, including attachments, constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior Agreements, related proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties.

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COUNTY and Contractor have executed this Agreement at Lakeport, California, on the day and year first written above.

COUNTY OF LAKE

CONTRACTOR

Jessica Pyska

Jessica Pyska (Nov 29, 2023 14:11 PST)

CHAIR, Board of Supervisors

[Signature]

Nordhammer Art Foundry

ATTEST:
SUSAN PARKER
Clerk to the Board of Supervisors

APPROVED AS TO FORM:
LLOYD GUINTIVANO
County Counsel

By: Johanna Delong

Johanna Delong (Nov 29, 2023 14:40 PST)

By: [Signature]



EXHIBIT "A" – PROJECT WORK

1. **CONTRACTOR RESPONSIBILITIES.** Contractor shall conduct all processes necessary to create, construct and install a life size bronze sculpture of a Lake Pomo Family which, subject to reasonable color variation, strictly resembles the concept reflected in the Final Concept Drawing attached hereto as Exhibit D. Said processes shall include, but not limited to: preparation and completion of the master artwork, construct molds for casting, prepare wax, create castings, assemble castings, and patina castings. Contractor shall install sculpture on a County installed base located in Courthouse Museum Park in Lakeport.

2. **REPORTING REQUIREMENTS.** Contractor shall submit periodic progress reports as may be requested by County. Said reports shall be in a format approved by County and submitted by Contractor to County within 20 days following the County's request.

4. **RECORDS RETENTION.** Contractor shall prepare, maintain and/or make available to County upon request, all records and documentation pertaining to this Agreement, including financial, statistical, property, recipient and service records and supporting documentation for a period of five (5) years from the date of final payment of this Agreement. If at the end of the retention period, there is ongoing litigation or an outstanding audit involving the records, Contractor shall retain the records until resolution of litigation or audit. After the retention period has expired, Contractor assures that confidential records shall be shredded and disposed of appropriately.

5. **COUNTY RESPONSIBILITIES.**

5.1 County shall compensate Contractor in accordance with the provisions set forth in this Agreement.

5.2 County shall construct a base of sufficient size and strength to support the above referenced Sculpture.

END OF EXHIBIT A

EXHIBIT "B" – FISCAL PROVISIONS

1. **CONTRACTOR'S FINANCIAL RECORDS.** Contractor shall keep financial records for funds received hereunder, separate from any other funds administered by Contractor, and maintained in accordance with Generally Accepted Accounting Principles and Procedures and the Office of Management and Budget's Cost Principles.

2. **PROGRESS PAYMENT SCHEDULE.** The compensation enumerated in paragraph 3 of the Agreement shall be subject to the following Progress Payment Schedule, except that the initial \$60,000 deposit shall be payable within twenty (20) days of contract execution by both parties.

- | | | |
|----|----------|--|
| A. | \$60,000 | Start-up master artwork and ordering materials |
| B. | \$50,000 | Artwork completed; begin molds for casting |
| C. | \$50,000 | Wax preparation and begin of castings |
| D. | \$60,000 | Assemble castings & finish patina castings |
| E. | \$10,000 | Delivery and installation on County provided base at Museum Park |

3. **REQUEST FOR PAYMENT.**

3.1 Upon completion of the work in accordance with Progress Payment Schedule hereinabove, the Contractor will submit to the County an invoice for a progress payment which shall be signed by the Contractor and supported by such data as the County Public Services Director may reasonably require, which may include but not be limited to photographs and physical inspection of the project work. The County's Public Services Director will, within ten (10) days after receipt of each progress payment request, either indicate in writing his approval of payment or return the progress payment request to the Contractor indicating in writing his reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate. The County's Public Services Director will, within ten (10) days of presentation to him of an acceptable progress payment request, pay the Contractor a progress payment on the basis of the approved partial payment estimate.

3.2 County shall make payment within 20 business days of an undisputed progress payment invoice for the compensation stipulated herein.

3.3 The payments prescribed herein shall constitute all compensation to Contractor for all costs of the Project Work, including, but not limited to, direct costs of labor of employees engaged by Contractor, subcontractors, travel expenses, telephone charges, copying and reproduction, computer time, and any and all other costs, expenses, fees and charges of Contractor, its agents and employees.

3.4 When Change Orders are required as a result of conflicts, inconsistencies, or omissions in the contract documents ("conflicts"), the Contractor shall not be entitled to compensation

from the County for additional services to the extent that the conflicts are the result of failures by the Contractor or Contractor's subcontractors to follow generally accepted professional standards and practices.

4. **CHANGE ORDERS.** If for any reason it may become desirable during the course of the Project Work to change the alignment, dimensions or design of the Work, the County reserves the right to issue change orders in writing and give effect to such changes as may be necessary or desirable. The changes may or may not result in a change in the amount of work. When the Contractor considers that any change ordered in writing by the County involves extra Work, he shall immediately notify the Lake County Public Services Director in writing and shall subsequently keep him informed as to when and where extra Project Work is to be performed and shall make claim for compensation therefor each month not later than the first day of the month following that in which the work claimed as extra work was performed. If the changes do, in the opinion of the Public Services Director, change the amount of work, the Compensation shall be adjusted in an amount as the parties may agree, subject to the Modification procedures set forth in the Agreement.

5. **AUDIT REQUIREMENTS AND AUDIT EXCEPTIONS**

5.1 Contractor warrants that it shall comply with all audit requirements established by County and will provide a copy of Contractor's Annual Independent Audit Report, if applicable.

5.2 County may conduct periodic audits of Contractor's financial records, notifying Contractor no less than 48 hours prior to scheduled audit. Said notice shall include a detailed listing of the records required for review. Contractor shall allow County, or other appropriate entities designated by County, access to all financial records pertinent to this Agreement.

5.3 Contractor shall reimburse County for audit exceptions within 30 days of written demand or shall make other repayment arrangements subject to the approval of County.

6. **EXPENDITURE OF FUNDS.**

6.1 County reserves the right to refuse payment to Contractor or disallow costs for any expenditure determined to be unreasonable, out of compliance, or inappropriate to the services provided hereunder.

END OF EXHIBIT B

EXHIBIT "C" – COMPLIANCE PROVISIONS

1. **INFORMATION INTEGRITY AND SECURITY.** Contractor shall immediately notify County of any known or suspected breach of personal, sensitive and confidential information related to Contractor's work under this Agreement.

2. **NON-DISCRIMINATION.** Contractor shall not unlawfully discriminate against any qualified worker or recipient of services because of race, religious creed, color, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status or age.

3. **AGREEMENTS IN EXCESS OF \$100,000.** Contractor shall comply with all applicable orders or requirements issued under the following laws:

- 3.1 Clean Air Act, as amended (42 USC 1857).
- 3.2 Clean Water Act, as amended (33 USC 1368).
- 3.3 Federal Water Pollution Control Act, as amended (33 USC 1251, et seq.)
- 3.4 Environmental Protection Agency Regulations (40 CFR and Executive Order 11738).

5. **INDEMNIFICATION AND HOLD HARMLESS.**

Contractor shall indemnify and defend County and its officers, employees, and agents against and hold them harmless from any and all claims, losses, damages, and liability for damages, including attorney's fees and other costs of defense incurred by County, whether for damage to or loss of property, or injury to or death of person, including properties of County and injury to or death of County officials, employees or agents, arising out of, or connected with Contractor's operations hereunder or the performance of the work described herein, unless such damages, loss, injury or death is caused solely by the negligence of County.

Contractor's obligations under this Section shall survive the termination of the Agreement.

6. **STANDARD OF CARE.** Contractor represents that it is specially trained, licensed, experienced and competent to perform all the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed, whether by Contractor or designated subcontractors, in a manner according to generally accepted practices.

7. **INTEREST OF CONTRACTOR.** Contractor assures that neither it nor its employees has any interest, and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services hereunder.

8. **DUE PERFORMANCE – DEFAULT.** Each party agrees to fully perform all aspects of this agreement. If a default to this agreement occurs, then the party in default shall be given written notice of said default by the other party. If the party in default does not fully correct

(cure) the default within 20 days of the date of that notice (i.e. the time to cure) then such party shall be in default. The time period for corrective action of the party in default may be extended in writing executed by both parties, which must include the reason(s) for the extension and the date the extension expires.

Notice given under this provision shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable time period. No such notice shall be deemed a termination of this Agreement, unless the party giving notice so elects in that notice, or so elects in a subsequent written notice after the time to cure has expired.

9. INSURANCE.

9.1 Contractor shall procure and maintain Workers' Compensation Insurance for all of its employees.

9.2 Contractor shall procure and maintain Comprehensive Public Liability Insurance, both bodily injury and property damage, in an amount of not less than one million dollars (\$1,000,000) combined single limit coverage per occurrence, including but not limited to endorsements for the following coverage: personal injury, premises-operations, products and completed operations, blanket contractual, and independent contractor's liability.

9.3 Contractor shall procure and maintain Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased and non-owned vehicles used in connection with Contractor's business in an amount of not less than one million dollars (\$1,000,000) combined single limit coverage per occurrence.

9.4 Contractor shall not commence work under this Agreement until it has obtained all the insurance required hereinabove and submitted to County certificates of insurance naming the County of Lake as additional insured. Contractor agrees to provide to County, at least 30 days prior to expiration date, a new certificate of insurance.

9.5 In case of any subcontract, Contractor shall require each subcontractor to provide all of the same coverage as detailed hereinabove. Subcontractors shall provide certificates of insurance naming the County of Lake as additional insured and shall submit new certificates of insurance at least 30 days prior to expiration date. Contractor shall not allow any subcontractor to commence work until the required insurances have been obtained.

9.6 For any claims related to the work performed under this Agreement, the Contractor's insurance coverage shall be primary insurance as to the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, agents or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

9.7 The Commercial General Liability and Automobile Liability Insurance must each contain, or be endorsed to contain, the following provision:

The County, its officers, officials, employees, agents, and volunteers are to be covered as additional insured and shall be added in the form of an endorsement to Contractor's insurance on Form CG 20 10 11 85. Contractor shall not commence work under this Agreement until Contractor has had delivered to County the Additional Insured Endorsements required herein.

Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of California Civil Code Section 2782.

9.8 Insurance coverage required of Contractor under this Agreement shall be placed with insurers with a current A.M. Best rating of no less than A: VII.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude County from taking other action as is available to it under any other provision of this Agreement or applicable law. Failure of County to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

9.9 Any failure of Contractor to maintain the insurance required by this section, or to comply with any of the requirements of this section, shall constitute a material breach of the entire Agreement.

10. ATTORNEY'S FEES AND COSTS. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

11. ASSIGNMENT. Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of County except that claims for money due or to become due Contractor from County under this Agreement may be assigned by Contractor to a bank, trust company, or other financial institution without such approval. Written notice of any such transfer shall be furnished promptly to County. Any attempt at assignment of rights under this Agreement except for those specifically consented to by both parties or as stated above shall be void.

12. PAYROLL TAXES AND DEDUCTIONS. Contractor shall promptly forward payroll taxes, insurances, and contributions to designated governmental agencies.

13. INDEPENDENT CONTRACTOR. It is specifically understood and agreed that, in the making and performance of this Agreement, Contractor is an independent contractor and is not an employee, agent or servant of County. Contractor is not entitled to any employee benefits.

County agrees that Contractor shall have the right to control the manner and means of accomplishing the result contracted for herein.

Contractor is solely responsible for the payment of all federal, state and local taxes, charges, fees, or contributions required with respect to Contractor and Contractor's officers, employees, and agents who are engaged in the performance of this Agreement (including without limitation, unemployment insurance, social security and payroll tax withholding.)

14. OWNERSHIP OF DOCUMENTS. All non-proprietary reports, drawings, renderings, or other documents or materials prepared by Contractor hereunder are the property of County.

15. SEVERABILITY. If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

16. ADHERENCE TO APPLICABLE DISABILITY LAW. Contractor shall be responsible for knowing and adhering to the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, (42 U.S.C. Sections 12101, et seq.). California Government Code Sections 12920 et seq., and all related state and local laws.

17. HIPAA COMPLIANCE. Contractor will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and will make his best efforts to preserve data integrity and the confidentiality of protected health information.

18. SAFETY RESPONSIBILITIES. Contractor will adhere to all applicable CalOSHA requirements in performing work pursuant to this Agreement. Contractor agrees that in the performance of work under this Agreement, Contractor will provide for the safety needs of its employees and will be responsible for maintaining the standards necessary to minimize health and safety hazards.

19. JURISDICTION AND VENUE. This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue of any action or proceeding regarding this Agreement or performance thereof shall be in Lake County, California. Contractor waives any right of removal it might have under California Code of Civil Procedure Section 394.

20. NO THIRD-PARTY BENEFICIARIES. Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in or for the benefit of third parties.

21. PUBLIC RECORDS ACT. Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that s/he considers to be confidential under the

California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

END OF EXHIBIT C

EXHIBIT "D" - FINAL CONCEPT DRAWING



NORDHAMMER ART FOUNDRY

3566 Big Valley Road
Kelseyville, CA 95451
707-489-0067

POMO BRONZE SCULPTURE PROJECT**Description of artwork to be created**

Nordhammer Art Foundry of Kelseyville, CA will design, sculpt, mold, cast in bronze, and deliver the Pomo Bronze Sculpture to the prepared site in Lakeport, CA. The sculpture will consist of a male dancer figure in regalia, and a pre-contact female figure holding a baby in a traditional woven canyng structure, a basket and a mortar and pestle, all done according to the approved maquette which was developed from 2019-2023. When standing, the male figure would be 5'6" tall, and the female figure 5'3" tall. Nordhammer Art Foundry welcomes input from the tribal committee on authenticity, but all artistic decisions of Nordhammer Art Foundry artists are final. The tribal committee will provide the Nordhammer artists actual or photographic examples of the authentic regalia, basket to be used, baby carrier, tule skirt (section) and mortar and pestle. The arrival of these authenticity items (actual or photographic) will confirm that those items are the officially approved items for the sculpture.

Cost payment schedule

1.	\$60,000	Begin creating full-scale master art work
2.	\$50,000	Art work completed; begin molds for casting
3.	\$50,000	Wax preparation and begin castings
4.	\$60,000	Assemble castings & finish; patina castings
5.	\$10,000	Installation
TOTAL	\$230,000	

Our first bid in 2019 verbally was \$200,000. Over the years 2020, 2021, 2022 and the first half of 2023 inflation has increased prices by over 20% (CPI+ 20.2 % since January, 2019) The new bid reflects a 20% cost of living increase. This is still, industry-wise, a very reasonable bid.

Timeline

1. 3 ½ to 4 months
2. 2 ½ months to 4 months
3. 3 ½ to 4 months
4. 3 to 5 months
5. 1 month

Acts of God

If the project is delayed because of Acts of God, such as accident, illness, severe weather, or natural disaster (or other Acts of God) then the project deadline(s) would be delayed accordingly.

If the contract payment schedule is disrupted because the progress payments are not received in a timely manner, then the project deadline(s) would be delayed accordingly.

END OF EXHIBIT D