

Purchase Requisition # R94972 - Ban
R95266 - EM

OCT 04 2016

BUDGET & FISCAL SERVICES

MT. DIABLO UNIFIED SCHOOL DISTRICT
1936 Carlotta Drive
Concord, CA 94519

On File
Attached W-9 Insurance

**AGREEMENT BETWEEN
MT. DIABLO UNIFIED SCHOOL DISTRICT
AND INDEPENDENT CONTRACTOR**

THIS AGREEMENT is made this 6th day of September, by and between the Mt. Diablo Unified School District (hereinafter "District") and Soul Shoppe (hereinafter "Contractor").

District hereby engages Contractor to render services under the terms and conditions of this Agreement.

1. Performance of Services

- (a) Contractor agrees to perform the services described on Exhibit "A" (hereinafter "Services") on page 4 of this Agreement as an independent contractor. Contractor will determine the means, manner, method, and details of performing the Services. Contractor shall be responsible for providing the materials, tools and transportation necessary for the performance of the services. Contractor may, at Contractor's own expense, use non-District employees to perform the Services under this Agreement. Subcontractors may be used only with the written approval of the District.
- (b) Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of the District. Contractor shall be solely responsible for the professional performance of the services, and shall receive no assistance, direction, or control from District. Contractor shall have sole discretion and control of Contractor's services and the manner in which they are performed.

2. Compensation. District agrees to compensate Contractor for the performance of the services on the following basis:

Not to exceed \$ <u>10,400.00</u> 5,000.00 for Services	114 - 3935 - 10 - 5800	\$ 4,000.00
The basis of the fee for Services shall be as follow	114 - 0930 - 10 - 5800	\$ 1,000.00
a. \$ _____ per hour,	132 - 3070 - 10 - 5800	\$ 5,400.00
b. \$ _____ per day, or	BUDGET CODE(S)	
c. \$ _____ per engagement.		

Check One:

- Partial Payments: Contractor shall invoice District on a monthly basis or as agreed to for all hours worked pursuant to this Agreement.
- Partial Payments: District shall make a payment per schedule detailed in Exhibit A. District Administrator will verify invoice indicating that all required services have been performed by each timeline.
- Payment in Full: Contractor shall invoice District on completion of services. District Administrator will verify invoice indicating that all required services have been performed.

Contractor shall be responsible for all expenses incurred in association with the performance of the Services.

3. Term and Termination. This Agreement will become effective on September 6, 2016. This Agreement will terminate upon the completion of the Services or when terminated as set forth below.

Either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other party. Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notice to the breaching party. Termination shall be effective immediately on receipt of said notice.

4. Relationship of the Parties. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor be considered an employee of District within the meaning of any federal, state, or local law or regulation including, but not limited to, laws or regulations governing unemployment insurance, old age benefits, workers' compensation, industrial illness or accident coverage, taxes, or labor and employment in general. Under no circumstances shall Contractor look to District as his/her employer, or as a partner, agent, or principal. Contractor shall not be entitled to any benefits accorded to District's employees, including, without limitation, workers' compensation, disability insurance, vacation, or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in the Contractor's name, disability, workers' compensation or other insurance, as well as licenses and permits usual or necessary for conducting the Services hereunder.

Contractor shall pay, when and as due, any and all local, state and federal income or other taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide District with proof of said payments upon demand.

5. Fingerprinting and Criminal Records Check of Contractor's Employees. Contractor shall comply with the provisions of California Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the contractor and/or its employees. To the extent Education Code §45125.1 is applicable, Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the governing board of the District that such employee has not been convicted of a felony, as defined in Education Code §45125.1. Contractor shall provide the certification document attached hereto as Exhibit A prior to commencing work under this Agreement.
6. Rules and Regulations. All rules, policies, and regulations of the Mt. Diablo Unified School District Board of Education and all federal, state, and local laws, ordinances and regulations are to be observed strictly by Contractor pursuant to this Agreement.
7. Indemnification. Contractor shall hold harmless, defend and indemnify District and its officers, elected and appointed officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in this agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the District.
8. Insurance. Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. **EXCEPTION:** Contracts of less than \$5,000 need only provide general liability insurance of \$1,000,000 per occurrence.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with a limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability/Errors & Omissions Liability,** if applicable: \$1,000,000 per occurrence.

If the contractor maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the contractor.

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The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The District, its officers, officials, employees, and volunteers are to be named as additional insured by endorsement to the Commercial General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations.

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the District.

INSURANCE REQUIREMENTS	
No waiver will be granted to eliminate the insurance requirements outlined in this contract. However, in special circumstances, certain insurance requirements may be modified or waived. The following items in Insurance section 8 are hereby waived or modified as follows:	
Limits:	_____
Other:	_____

The initials of the Superintendent, or his/her designee, and the General Counsel, are required to waive or modify any Insurance requirements in this Agreement:	
_____ Superintendent	_____ General Counsel

- 9. Ownership of Designs and Plans. Contractor agrees that all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions and all other information and items made during the course of this Agreement and arising from the Services shall be owned by and assigned to District as its sole and exclusive property.
- 10. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by telegram, overnight delivery service, or facsimile transmission, addressed as follows:

<u>DISTRICT</u>	<u>CONTRACTOR</u>
Mt. Diablo Unified School District	Name: <u>Soul Shoppe</u>
1936 Carlotta Drive	Attn: <u>Vicki Abadesco</u>
Concord, CA 94519-1397	Address: <u>111 Fairmount Ave, Suite 503</u>
Attn: Superintendent	<u>Oakland, CA 94611</u>
	Phone: <u>510-338-3231</u>
	Fax: <u>510-338-3234</u>
	Tax ID #: <u>20-2676612</u>

Any notice personally given or sent by telegram or facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the next business day following delivery thereof to

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the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 11. Entire Agreement of Parties. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both parties.
- 12. California Law. This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Contra Costa County, California.
- 13. Attorneys' Fees. If either party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit as awarded by a court of competent jurisdiction, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorneys' fees.
- 14. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

MT. DIABLO UNIFIED SCHOOL DISTRICT

Soul Shoppe

By: Linda Schuler 9/6/16
Signature of Principal/Budget Administrator Date

By: Shawna Jones 9/6/16
Name of Company/Organization or Independent Contractor/Consultant
Signature of Contractor/Consultant Date

Title: Linda Schuler, Principal
Print Name and Title

Title: Shawna Jones, Office Manager
Print Name and Title

Authorized and Approved by:

[Signature] 9/6/16
Superintendent or Designee Date

Prior to commencement of service, sign and forward completed original contract to Fiscal Services.

Linda Schuler 9/6/16
Originator's Signature Date

Bancroft Elementary
Site/Department Originating this Contract

Linda Schuler, Principal
Print Name of Originator and Title

Billing Address if reimbursed by outside agency—i.e. ASB, PTA, PFC

Distribution
original: Fiscal Services for payment
copy: Contractor
copy: Originator/Budget Administrator

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the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

11. Entire Agreement of Parties. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both parties.
12. California Law. This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Contra Costa County, California.
13. Attorneys' Fees. If either party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit as awarded by a court of competent jurisdiction, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorneys' fees.
14. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

MT. DIABLO UNIFIED SCHOOL DISTRICT

Soul Shoppe

By: <u>Jennifer Molino</u> 9/30/16		By: <u>Shawna Jones</u> 9/16/16	
Signature of Principal/Budget Administrator Date		Signature of Contractor/Consultant Date	
Title: <u>Jennifer Molino, Principal</u>		Title: <u>Shawna Jones, Office Manager</u>	
Print Name and Title		Print Name and Title	

Authorized and Approved by:

Grant Soga 10/4/16
 Superintendent or Designee Date

Prior to commencement of service, sign and forward completed original contract to Fiscal Services.

<u>Jennifer Molino</u> 9/30/16	<u>El Monte Elementary</u>
Originator's Signature Date	Site/Department Originating this Contract
<u>Jennifer Molino</u>	
Print Name of Originator and Title	

Billing Address if reimbursed by outside agency---i.e. ASB, PTA, PFC

Distribution	
original:	Fiscal Services for payment
copy:	Contractor
copy:	Originator/Budget Administrator

EXHIBIT A

LIST OF SERVICES, INCLUDING DATE(S), TO BE PERFORMED BY CONTRACTOR

IF PARTIAL PAYMENTS ARE TO BE MADE TO CONTRACTOR ON A SCHEDULE
AS INDICATED ON PAGE 1, PLEASE LIST PAYMENT SCHEDULE HERE

Bancroft:

- 3 Grade-Level Workshops: \$3,000 (\$1,000/each)
- 1 Peacemaker Program: \$2,000 (originally \$2,750)

Total: \$5,000

El Monte:

- 5 Grade-Level Workshops: \$5,000 (\$1,000/each)
- 1 Parent Night: \$400

Fee Total: \$5,400

*Write date of
the workshop
here & on business
plus*

EXHIBIT B

Contractor REQUIRED to Complete

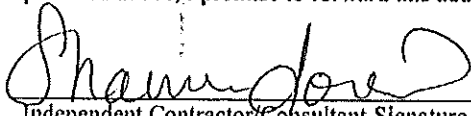
CRIMINAL BACKGROUND CHECK CERTIFICATION

Mt. Diablo Unified School District
Consultant/Independent Contractor Agreement - Criminal Background Check

Name of Independent Consultant/Contractor:		Soul Shoppe
Services to be performed under the Agreement:		Year round Program
Schools/Locations where services will be performed:		Bancroft Elementary El Monte Elementary
Total amount to be paid by the District under this Agreement:		\$ 5,000.00 / \$ 5,400.00
Term of Agreement:		September 2016-June 2017
<i>Check the applicable box(es) and fill in any blanks.</i>		
1	<input checked="" type="checkbox"/>	I certify that none of my employees, nor myself, will have more than limited contact (as defined by the District) with District students during the term of the Agreement. Therefore, we have not been fingerprinted.
2A		If this box is checked, then Box 2B also applies and must be checked to indicate these employees have been fingerprinted. The following employees will have more than limited contact (as defined by the District) with District students during the term of the Agreement (attach and sign additional pages, as needed):
2B		I certify that the employees noted in 2A above have been fingerprinted under procedures established by the California Department of Justice, and the results of those fingerprints reveal that none of these employees have been arrested or convicted of a serious or violent felony, as defined by the California Penal Code.

Certification by Contractor/Consultant

"I certify that the information provided herein is true and accurate. I further acknowledge that during the term of my Agreement with the District, if I learn of additional information which differs from the responses provided above, I promise to forward this additional information to the District immediately."


 Independent Contractor/Consultant Signature

Shawna Jones 9/6/16
 Print Name Date
 Independent Contractor/Consultant


 Superintendent or Designee's Signature

Jonathan Eagan 10/4/16
 Print Name Date
 Superintendent or Designee's Signature

R94972 / R95264



PROGRAM AGREEMENT 2016-17

School: BANCROFT ELEMENTARY SCHOOL

Contact: Linda Schuler

Title: Principal

Address: 2200 Parish Drive

City: Walnut Creek, CA 94598

Phone: 925-933-3405 or 925-381-3359 (cell)

Email: schulerl@mdusd.org

of Students: 598

of Teachers: 24

Program Description:

- 3 Grade-Level Workshops: \$3,000 (\$1,000/each)
 - *Check In*
 - *Stop & Breathe*
 - *100% You*

- 1 Peacemaker Program: \$2,000 (originally \$2,750)
 - *1:1 60-min Coaching Session with School Liaison*
 - *Classified Staff Training (free)*
 - *6 hour training in the Fall with Peacemakers*
 - *45-min. P/M Follow-up session in the Spring*

Total: \$5,000

\$4000.00 - PFC 114-3935
 1000.00 - site 114-0930

The above is agreed to and accepted by:

Linda Schuler (Linda Schuler)

Date: 9-6-16

Vicki Abadesco (Vicki Abadesco)

Date: July 13, 2016

Please fax back to: (510) 338-3234 (no fax cover needed)
 111 Fairmount Ave, Suite 503
 Oakland, CA 94611
 (510) 338-3231 (Tel) • support@soulshoppe.com



PROGRAM AGREEMENT 2016-17

School: EL MONTE ELEMENTARY

Contact: Jennifer Molino

Title: Principal

Address: 1400 Dina Drive

City: Concord, CA 94518

Phone: 925-685-3113

Email: molinoj@mdusd.org

of Students: _____

of Teachers: _____

Program Description:

- 5 Grade-Level Workshops: \$5,000 (\$1,000/each)
- 1 Parent Night: \$400

Fee Total: \$5,400

The above is agreed to and accepted by:

Jennifer Molino (Jennifer Molino)
Vicki Abadesco (Vicki Abadesco)

Date: 10/3/16

Date: October 3, 2016

Please fax back to: (510) 338-3234 (no fax cover needed)

111 Fairmount Ave, Suite 503

Oakland, CA 94611

(510) 338-3231 (Tel) • support@soulshoppe.com

(This is a Program Agreement, not an invoice)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/12/2016

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 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
EDGEWOOD PARTNERS INS. CTR EPIC
3000 EXECUTIVE PKWY #325
SAN RAMON, CA 94583

INSURED
SOUL SHOPPE
111 FAIRMOUNT AVENUE STE 503
OAKLAND, CA 94611

CONTACT NAME:
PHONE (A/C No. Ex): (888) 349-1333 FAX (A/C No): 866-828-2424
E-MAIL ADDRESS: Certificate@hanover.com

INSURER(S) AFFORDING COVERAGE
INSURER A: Massachusetts Bay Ins Co NAIC # 22306
INSURER B:
INSURER C:
INSURER D:
INSURER E:
INSURER F:

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL(SUBR) INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC	<input checked="" type="checkbox"/>	ODF A150276 02	02/01/2016	02/01/2017	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	<input checked="" type="checkbox"/>	ODF A150276 02	02/01/2016	02/01/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS UAB DED: RETENTION \$	<input checked="" type="checkbox"/>	ODF A150276 02	02/01/2016	02/01/2017	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICEMEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
REVISED/ ADDRESS CHNG ML Diablo Unified School District is an Additional Insured pursuant to the terms and conditions of form: 3911006 (Businessowners Liability Special Broadening Endorsement).

CERTIFICATE HOLDER
Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519

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

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BUSINESSOWNERS LIABILITY SPECIAL BROADENING ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SUMMARY OF COVERAGES

	Limits	Page
1. Additional Insured by Contract, Agreement or Permit		1
2. Additional Insured - Broad Form Vendors		2
3. Alienated Premises		2
4. Bodily Injury Redefined		2
5. Broad Form Property Damage - Borrowed Equipment, Customers Goods and Use of Elevators		2
6. Incidental Malpractice (Employed Nurses, EMT's and Paramedics)		3
7. Personal and Advertising Injury - Broad Form		3
8. Product Recall Expense	\$25,000 Occurrence \$50,000 Aggregate	3
9. Unintentional Failure to Disclose Hazards		5
10. Unintentional Failure to Notify		5

This endorsement amends coverages provided under the Businessowners Coverage Form through new coverages and broader coverage grants. This coverage is subject to the provisions applicable to the Businessowners Coverage Form, except as provided below.

1. Additional Insured by Contract, Agreement or Permit

Under SECTION II - LIABILITY, C. Who Is An Insured, Paragraph 4. is added as follows:

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

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf,

but only with respect to:

- (3) "Your work" for the additional insured(s) at the location designated in the contract, agreement or permit; or
- (4) Premises you own, rent, lease, control or occupy.

This insurance applies on a primary basis if that is required by the written contract, agreement or permit.

b. This provision does not apply:

- (1) Unless the written contract or written agreement has been executed or permit has been issued prior to the "bodily injury", "property damage" or "personal and advertising injury";
- (2) To any person or organization included as an insured by an endorsement issued by us and made part of this Policy;
- (3) To any person or organization included as an insured under Item 1.a.2. of this endorsement;
- (4) To any lessor of equipment:
 - (a) After the equipment lease expires; or
 - (b) If the "bodily injury", "property damage" or "personal and advertising injury" arises out of the sole negligence of the lessor;



- (i) Pumping stations; and
- (ii) Water mains.
- (b) Communication Supply Services, meaning property supplying communication services, including telephone, radio, microwave or television services to the described premises, such as:
 - (i) Communication transmission lines, including optic fiber transmission lines;
 - (ii) Coaxial cables; and
 - (iii) Microwave radio relays except satellites.

It does not include overhead transmission lines or overhead distribution lines.

- (c) Power Supply Services, meaning the following types of property supplying electricity, steam or gas to the described premises:
 - (i) Utility generating plants;
 - (ii) Switching stations;
 - (iii) Substations;
 - (iv) Transformers; and
 - (v) Transmission lines,

But does not include overhead transmission lines, overhead distribution lines, overhead transformers or any other overhead service equipment or similar (however mounted and whatever mounted upon) equipment.

The definitions of Business Income and Extra Expense contained in the Business Income and Extra Expense Additional Coverages also apply to this Utility Services Additional Coverage.

39. Worldwide Property Off Premises

Under Section I - Property A. 6. Coverage Extensions, the following is added:

r. Worldwide Property Off Premises

You may extend the insurance that applies to Business Personal Property to apply to Covered Business Personal Property other than "money" and "securities", "valuable papers and records" or accounts receivable, while it is temporarily outside the coverage territory, while "in transit" or on airborne transportation carriers for the purpose of exhibition, service or repair caused by or resulting from a Covered Cause of Loss.

The most we will pay for loss under this Coverage Extension is \$45,000 per occurrence". The amount payable under this Coverage Extension is not subject to the Limits of Insurance of Section I - Property.

- (5) To any:
- (a) Owners or other interests from whom land has been leased which takes place after the lease for that land expires; or
 - (b) Managers or lessors of premises if:
 - (i) The occurrence takes place after you cease to be a tenant in that premises; or
 - (ii) The "bodily injury", "property damage" or "personal and advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor; or
- (6) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.
- c. Additional insured coverage provided by this provision will not be broader than coverage provided to any other insured.
 - d. All other insuring agreements, exclusions, and conditions of the policy apply.

2. Additional Insured - Broad Form Vendors

Under SECTION II - LIABILITY, C. Who Is An Insured, paragraph 5. is added as follows:

5. Any person or organization with whom you agreed, because of a written contract or written agreement to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

The insurance afforded the vendor does not apply to:

- a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- b. Any express warranty unauthorized by you;
- c. Any physical or chemical change in the product made intentionally by the vendor;
- d. Repackaging, unless unpacked solely for the purpose of inspection,

demonstration, testing, or the substitution of parts under instruction from the manufacturer, and then repackaged in the original container;

- e. Any failure to make such inspection, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the distribution or sale of the product;
- f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any thing or substance by or for the vendor; or
- h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(1) The exceptions contained in paragraphs 5.d. or 5.f.; or

(2) Such inspections, adjustments, test or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

3. Alienated Premises

Under SECTION II - LIABILITY, B. Exclusions, paragraph 1.k.(2) is replaced in its entirety with the following:

- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises and occurred from hazards that were known by you, or should have reasonably been known by you, at the time the property was transferred or abandoned.

4. Bodily Injury Redefined

Under SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions, definition 4. is replaced in its entirety by the following:

4. "Bodily injury" means bodily injury, disability, 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".
5. Broad Form Property Damage - Borrowed Equipment, Customers Goods, Use of Elevators
- a. Under SECTION II - LIABILITY, B. Exclusions, paragraph 1.k., the following is added:
- Paragraph (4) does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations.
- Paragraph (3), (4) and (6) do not apply to "property damage" to "customers goods" while on your premises nor to the use of elevators.
- b. Under SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions, the following additional definition is added:
- "Customers goods" means property of your customer on your premises for the purpose of being:
- a. Worked on; or
- b. Used in your manufacturing process.
- c. The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured whether primary, excess, contingent or on any other basis.
6. Incidental Malpractice - Employed Nurses, EMT's and Paramedics
- Under SECTION II - LIABILITY, C. Who Is An Insured, paragraph 2.a.(1)(d) does not apply to a nurse, emergency medical technician or paramedic employed by you if you are not engaged in the business or occupation of providing medical, paramedical, surgical, dental, x-ray or nursing services.
7. Personal and Advertising Injury - Broad Form
- Under SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions, definition 15, "Personal and Advertising Injury", paragraph h. is added as follows:
- h. Discrimination or humiliation (unless insurance thereof is prohibited by law) that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:
- (1) Not done intentionally by or at the direction of:
- (a) The insured; or
- (b) Any officer of the corporation, director, stockholder, partner or member of the insured; and
- (2) Not directly or indirectly related to an "employee", nor to the employment, prospective employment or termination of any person or persons by an insured.
8. Product Recall Expense
- a. Under SECTION II - LIABILITY, B. Exclusions, Paragraph 1. o. is replaced in its entirety by the following:
- o. Recall of Products, Work or Impaired Property
- Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:
- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";
- If such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it, but this exclusion does not apply to "product recall expenses" that you incur for the "covered recall" of "your product". The exception to the exclusion does not apply to "product recall expenses" resulting from:
- (1) Failure of any products to accomplish their intended purpose;
- (2) Breach of warranties of fitness, quality, durability or performance;
- (3) Loss of customer approval, or any cost incurred to regain customer approval;
- (4) Redistribution or replacement of "your product" which has been recalled by like products or substitutes;
- (5) Caprice or whim of the insured;
- (6) A condition likely to cause loss of which any insured knew or had reason to know at the inception of this insurance;
- (7) Asbestos, including loss, damage or clean up resulting from asbestos or asbestos containing materials; or

- (8) Recall of "your products" that have no known or suspected defect solely because a known or suspected defect in another of "your products" has been found.
- b. Under SECTION II - LIABILITY, C. Who Is An Insured, paragraph 4.c. is added as follows:
- c. "Bodily injury" or "property damage" do not apply to "product recall expense" arising out of any withdrawal or recall that occurred before you acquired or formed the organization.
- c. Under SECTION II - LIABILITY, E. Liability and Medical Expense General Conditions, 2. Duties in the Event of Occurrence, Offense, Claim or Suit, paragraph e. is added as follows:
- e. You must see to it that the following are done in the event of an actual or anticipated "covered recall" that may result in "product recall expense":
- (1) Give us prompt notice of any discovery or notification that "your product" must be withdrawn or recalled. Include a description of "your product" and the reason for the withdrawal or recall;
 - (2) Cease any further release, shipment, consignment or any other method of distribution of like or similar products until it has been determined that all such products are free from defects that could be a cause of loss under this insurance.
- d. Under SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions, the following additional definitions are added:
- "Covered recall" means a recall made necessary because you or a government body has determined that a known or suspected defect, deficiency, inadequacy, or dangerous condition in "your product" has resulted or will result in "bodily injury" or "property damage".
- "Product recall expense(s)" means:
- a. Necessary and reasonable expenses for:
 - (1) Communications, including radio or television announcements or printed advertisements including stationary, envelopes and postage;
 - (2) Shipping the recalled products from any purchaser, distributor or user to the place or places designated by you;
 - (3) Remuneration paid to your regular "employees" for necessary overtime;
 - (4) Hiring additional persons, other than your regular "employees";
 - (5) Expenses incurred by "employees" including transportation and accommodations;
 - (6) Expenses to rent additional warehouse or storage space;
 - (7) Disposal of "your product", but only to the extent that specific methods of destruction other than those employed for trash discarding or disposal are required to avoid "bodily injury" or "property damage" as a result of such disposal,you incur exclusively for the purpose of recalling "your product"; and
 - b. Your lost profit resulting from such "covered recall".
- e. Under SECTION II - LIABILITY, D. Liability and Medical Expenses Limits of Insurance, the following is added:
5. The Limits of Insurance and rules stated below fix the most that we will pay under this Product Recall Expense Coverage.
- (1) The Aggregate Limit is the most that we will reimburse you for the sum of all "product recall expenses" incurred for all "product recall expenses" initiated during the policy period.
 - (2) The Occurrence Limit shown on the Summary of Coverages is the most we will pay in connection with any one defect or deficiency.
 - (a) All "product recall expenses" in connection with substantially the same general harmful condition will be deemed to arise out of the same defect or deficiency and considered one "occurrence".

- (b) Any amount reimbursed for "product recall expenses" in connection with any one "occurrence" will reduce the amount of the Aggregate Limit available for reimbursement of "product recall expenses" in connection with any other defect or deficiency.
- (c) If the Aggregate Limit has been reduced by reimbursement of "product recall expenses" to an amount that is less than the Occurrence Limit, the remaining Aggregate Limit is the most that will be available for reimbursement of "product recall expenses" in connection with any other defect or deficiency.

6. A deductible of \$500 applies per each "Occurrence".

9. Unintentional Failure to Disclose Hazards

Under SECTION II - LIABILITY, E. Liability and Medical Expenses General Conditions, paragraph 6. is added as follows:

6. Representations

We will not disclaim coverage under this Coverage Form if you fail to disclose all hazards existing as of the inception date of the policy provided such failure is not intentional.

10. Unintentional Failure to Notify

Under SECTION II - LIABILITY, E. Liability and Medical Expenses General Conditions, 2. Duties in the Event of Occurrence, Offense, Claim or Suit, paragraph f. is added as follows:

- f. Your rights afforded under this Coverage Form shall not be prejudiced if you fail to give us notice of an "occurrence", offense, claim or "suit", solely due to your reasonable and documented belief that the "bodily injury" or "property damage" is not covered under this Policy.