RESOLUTION - ACTION REQUESTED 2017-355

MEETING: June 6, 2017

TO: The Board of Supervisors

FROM: Chevon Kothari, Human Services Director

RE: Agreement with Berliner-Cohen Attorneys at Law to Represent MCHSD in Juvenile Dependency Cases

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with Berliner-Cohen Attorneys at Law, to represent Mariposa County Human Services Department in juvenile dependency and public guardian/conservatorship cases and any other matter County Counsel deems appropriate in an amount not to exceed $60,000; and authorize the Board of Supervisors Chair to sign the Agreement.

In past years, County Counsel’s office provided much of these services. Due to workload and availability, it was determined that a direct contract with Berliner-Cohen would benefit Human Services. Berliner-Cohen will provide legal services in juvenile dependency and public guardian/conservatorship cases. County Counsel will determine when it is necessary for Berliner-Cohen to act for the Human Services Department in Child Welfare cases and any other matter County Counsel deems appropriate.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
Mariposa County has an existing agreement with Berliner-Cohen, approved through Resolution No. 2016-440 on August 16, 2016.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
If this contract is not approved, the workload for the County Counsel’s office may be such that it creates process delays.

FINANCIAL IMPACT:
There is sufficient funding in the Social Services Budget to fund this Agreement. There is no impact to the County General Fund.

ATTACHMENTS:
Berliner Cohen Agreement 2018 May 19 2017 (PDF)

CAO RECOMMENDATION
Requested Action Recommended
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Kevin Cann, District IV Supervisor
SECONDER: Merlin Jones, District II Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT ("Agreement") is made and entered into this 6th day of June, 2017 by and between the County of Mariposa, a political subdivision of the State of California, ("County"), and Berliner-Cohen Attorneys At Law, ("Contractor"), pursuant to the following terms and conditions.

WITNESSETH:

1. TERM

The term of this Agreement shall commence on July 1, 2017 and terminate on June 30, 2018 unless extended as provided by this Agreement.

2. SERVICES

Contractor shall perform legal services as described in Exhibit A, "Scope of Work," which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work.

3. COMPENSATION

Contractor shall be compensated for services performed in an amount not to exceed $60,000. The Contractor’s hourly rates are listed in Exhibit B, "Cost Proposal." The County shall pay Contractor within thirty (30) days of receipt of an approved invoice.

4. 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 by the Contractor, its agents, representatives, or employees.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO)Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and 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 (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
(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 limits no less than $1,000,000 per accident for bodily injury and property damage.

(3) **Workers’ Compensation insurance** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than $2,000,000 per accident for bodily injury or disease.

(4) **Professional Liability (Errors and Omissions) Insurance** appropriate to the Contractor’s profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

**B. OTHER INSURANCE PROVISIONS**

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

(1) **Additional Insured Status:** The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL 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. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 forms if a later edition is used).

(2) **Primary Coverage:** For any claims related to this Agreement, the Contractor’s insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.

(3) **Notice of Cancellation:** Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

(4) **Waiver of Subrogation:** Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

(5) **Deductibles and Self-Insured Retentions:** Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
(6) Acceptability of Insurers: 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 County.

(7) Verification of Coverage: Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

(8) Subcontractors: Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.

(9) Special Risks or Circumstances: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

5. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify Entity its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney’s fees, arising from all acts or omissions to act of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from Entity’s sole negligence or willful acts.

6. INDEPENDENT CONTRACTOR

It is the expressed intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

7. PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any
penalties and interest on such contributions, which would otherwise be the responsibility of County.

8. **STATE AND FEDERAL TAXES**

As Contractor is not County’s employee, Contractor is responsible for paying all required state and federal taxes. In particular:

   a. County will not withhold FICA (Social Security) from Contractor’s payments;
   b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
   c. County will not withhold state or federal income tax from payment to Contractor;
   d. County will not make disability insurance contributions on behalf of Contractor;
   e. County will not obtain workers’ compensation insurance on behalf of Contractor.

9. **ASSIGNMENT**

It is understood and agreed that this Contract contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Contract will be permitted only with the express written consent of the County.

10. **NOTICE**

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

**CONTRACTOR:**
Kimberly G. Flores
Berliner-Cohen
Attorneys At Law
2844 Park Ave
Merced, CA 95348

**COUNTY:**
County of Mariposa
5362 Lemee Lane
P.O. Box 99
Mariposa, CA 95338
Fax: (209) 742-0994

11. **COMPLIANCE**

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor’s performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person’s race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.
12. 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 it 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.

13. ENTIRE AGREEMENT AND MODIFICATION

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and the Mariposa County Human Services Department. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

14. ENFORCEABILITY AND SEVERABILITY

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

15. TERMINATION AND RIGHTS UPON TERMINATION

A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.

B. Either party may terminate this Agreement for convenience upon 30 calendar days’ written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.

C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.

16. NO WAIVER

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.
17. **DISPUTES**

Should it become necessary for a party to this Agreement to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney’s fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Mariposa, State of California.

18. **CAPTIONS**

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

19. **NUMBER AND GENDER**

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word “person” includes corporations, partnerships, firms or associations, wherever the context so requires.

20. **MANDATORY AND PERMISSIVE**

“Shall” is mandatory. “May” is permissive.

21. **SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

22. **COUNTERPARTS**

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

23. **OTHER DOCUMENTS**

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

24. **CONTROLLING LAW**

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.
25. **AUTHORITY**

Each party and each party’s signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

26. **NEGOTIATED AGREEMENT**

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

27. **NO RELIANCE ON REPRESENTATIONS**

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

28. **WARRANTY**

County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release.

29. **FUNDING AVAILABILITY**

It is mutually agreed that if the County budget of the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for this Agreement, this Agreement shall be of no further force and effect. In this event, the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement. County budget decisions are subject to the discretion of the Board of Supervisors.

If funding for any fiscal year is reduced or deleted by the County budget for purposes of this Agreement, the County shall have the option to either cancel this Agreement with no liability occurring to the County, or offer an Agreement amendment to Contractor to reflect the reduced amount.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

COUNTY OF MARIPOSA

[Signature]
Marshall Long, Chair
Board of Supervisors

CONTRACTOR

[Signature]
Kimberly G. Flores

ATTEST:

[Signature]
Rene LaRoche
Clerk of the Board

APPROVED AS TO FORM:

[Signature]
Steven W. Dahlem
County Counsel
Exhibit A

SCOPE OF WORK

Mariposa County Human Services Department is hiring the Contractor to provide legal services in juvenile dependency and public guardian/conservatorship cases and any other matter County Counsel deems appropriate. The Contractor will provide those legal services reasonably required to represent the County and will take reasonable steps to keep the County informed of any progress on any cases.
Exhibit B
COST PROPOSAL

Rate of Schedule

Kimberly G. Flores $200/hour
Paralegal(s) $100/hour

The total cost is not to exceed $60,000.
**CERTIFICATE OF LIABILITY INSURANCE**

**PRODUCER**
NFP P & C Services, Inc. - San Jose
Lic # 0F15715
160 W. Santa Clara St. Ste. 575
San Jose, CA 95113

**INSURED**
Berliner Cohen LLP
Ten Almaden Blvd., 11th Floor
San Jose, CA 95113-2233

**INSURER(S) AFFORDING COVERAGE**
Citizens Ins Co of America
NAIC # 31534

**COVERAGE**

<table>
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<tr>
<th>TYPE OF INSURANCE</th>
<th>INSURER(S) AFFORDING COVERAGE</th>
<th>POLICY NUMBER</th>
<th>POLICY EFF (MM/DD/YYYY)</th>
<th>POLICY EXP (MM/DD/YYYY)</th>
<th>LIMITS</th>
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<td>4/1/2018</td>
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<td>A</td>
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**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES**
ACORD 101, Additional Remarks Schedule, may be attached if more space is required.

RE: Professional Service Agreement - FY 2016-2017; Our File No.: 23315-005 - Per Written Contract/Agreement with the Named Insured.

Certificate holder is named Additional Insured as respects to General Liability per form 391-1006 0816 attached.

Form CIR attached.

**CERTIFICATE HOLDER**
Mariposa County Human Services Department
P.O. Box 99
Mariposa, CA 95338

**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**
M Melendez/MELEND

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COMMENTS/REMARKS

CONTRACTUAL INSURANCE REQUIREMENTS

The attached Certificate of Insurance is provided as part of our service to our client, the Insured. If special endorsements have been provided, they also are indicated attached. You may find that these documents do not comply with all the terms and conditions of the underlying contract between the Certificate Holder and the Insured due to the insurance company's insuring conditions, limitations, exclusions and other terms. If you have any questions, please contact the undersigned.

NFP Property and Casualty Services, Inc.
160 West Santa Clara Street, Suite #575
CA License #0F15715

TELEPHONE: 408.792.5400
FAX: 408.792.3670
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESSOWNERS LIABILITY SPECIAL BROADENING ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

<table>
<thead>
<tr>
<th>SUMMARY OF COVERAGE</th>
<th>Limits</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Additional Insured by Contract, Agreement or Permit</td>
<td>Included</td>
<td>1</td>
</tr>
<tr>
<td>2. Additional Insured - Broad Form Vendors</td>
<td>Included</td>
<td>2</td>
</tr>
<tr>
<td>3. Alienated Premises</td>
<td>Included</td>
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<tr>
<td>4. Broad Form Property Damage - Borrowed Equipment, Customers Goods and Use of Elevators</td>
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<td>5. Incidental Malpractice (Employed Nurses, EMT's and Paramedics)</td>
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<td>6. Personal and Advertising Injury - Broad Form</td>
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<td>7. Product Recall Expense</td>
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<td>Product Recall Deductible</td>
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<td>8. Unintentional Failure to Disclose Hazards</td>
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<tr>
<td>9. Unintentional Failure to Notify</td>
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</tr>
</tbody>
</table>

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.

The following changes are made to SECTION II - LIABILITY:

1. Additional Insured by Contract, Agreement or Permit

   The following is added to SECTION II - LIABILITY, C. Who Is An Insured:

   Additional Insured by Contract, Agreement or Permit

   a. Any person or organization with whom you agreed in a written contract, written agreement or permit to add such person or organization as an additional insured on your policy 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 your acts or omissions, or the acts or omissions of those acting on your behalf, but only with respect to:

   (1) "Your work" for the additional insured(s) designated in the contract, agreement or permit;

   (2) Premises you own, rent, lease or occupy; or

   (3) Your maintenance, operation or use of equipment leased to you.

   b. The insurance afforded to such additional insured described above:

   (1) Only applies to the extent permitted by law; and

   (2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.

   (3) Applies on a primary basis if that is required by the written contract, written agreement or permit.

   (4) Will not be broader than coverage provided to any other insured.

   (5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.
c. This provision does not apply:

(1) Unless the written contract or written agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal injury and advertising injury".

(2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.

(3) To any lessee of equipment:

(a) After the equipment lease expires; or

(b) If the "bodily injury", "property damage", "personal and advertising injury" arises out of sole negligence of the lessor.

(4) To any:

(a) Owners or other interests from whom land has been leased if the "occurrence" takes place or the offense is committed after the lease for the land expires; or

(b) Managers or lessors of premises if:

(i) The "occurrence" takes place or the offense is committed after you cease to be a tenant in that premises; or

(ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.

(5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved the rendering of or failure to render any professional services by or for you.

d. With respect to the insurance afforded to these additional insureds, the following is added to SECTION II - LIABILITY, D. Liability and Medical Expense Limits of Insurance:

The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:

1. Required by the contract, agreement or permit described in Paragraph a; or

2. Available under the applicable Limits of Insurance shown in the Declarations.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

e. All other insuring agreements, exclusions, and conditions of the policy apply.

2. Additional Insured - Broad Form Vendors

The following is added to SECTION II - LIABILITY, C. Who Is An Insured:

Additional Insured - Broad Form Vendors

a. Any person or organization that is a vendor with whom you agreed in a written contract or written agreement to include as an additional insured under this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" arising out of your products which are distributed or sold in the regular course of the vendor's business.

b. The insurance afforded to such vendor described above:

(1) Only applies to the extent permitted by law;

(2) Will not be broader than the insurance which you are required by the contract or agreement to provide for such vendor;

(3) Will not be broader than coverage provided to any other insured; and

(4) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.

c. With respect to insurance afforded to such vendors, the following additional exclusions apply:

The insurance afforded to the vendor does not apply to:

(1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reasons of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement;

(2) Any express warranty unauthorized by you;
(3) Any physical or chemical change in the product made intentionally by the vendor;

(4) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, or testing, or the substitution of parts under instruction from the manufacturer, and then repackaged in the original container;

(5) 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 sale of the product;

(6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor;

(8) "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:

(a) The exceptions contained within the exclusion in subparagraphs (4) or (6) above; or

(b) Such inspections, 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 products.

(9) "Bodily injury" or "property damage" arising out of an "occurrence" that took place before you have signed the contract or agreement with the vendor.

(10) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.

(11) 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.

d. With respect to the insurance afforded to these vendors, the following is added to SECTION II - LIABILITY, D. Liability and Medical Expense Limits of Insurance:

The most we will pay on behalf of the vendor for a covered claim is the lesser of the amount of insurance:

1. Required by the contract or agreement described in Paragraph a; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

3. Alienated Premises

SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage k. Damage to Property, paragraph (2) is replaced by 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. Broad Form Property Damage - Borrowed Equipment, Customers Goods, Use of Elevators

a. The following is added to SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage, k. Damage to Property:

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. For the purposes of this endorsement, the following definition is added to SECTION II - LIABILITY, F. Liability and Medical Expenses.

1. "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.

5. Incidental Malpractice - Employed Nurses, EMT's and Paramedics

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.

6. Personal Injury - Broad Form
   a. SECTION II - LIABILITY, B. Exclusions, 2. Additional Exclusions Applicable only to "Personal and Advertising Injury", paragraph e. is deleted.
   b. SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions, 14. "Personal and advertising injury", paragraph b. is replaced by the following:
      b. Malicious prosecution or abuse of process.
   c. The following is added to SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions, Definition 14. "Personal and advertising injury":
      
      "Discrimination" (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" is:
      (1) Not done intentionally by or at the direction of:
          (a) The insured;
          (b) Any officer of the corporation, director, stockholder, partner or member of the insured; and
      (2) Not directly or indirectly related to an "employee", not to the employment, prospective employment or termination of any person or persons by an insured.
   d. For purposes of this endorsement, the following definition is added to SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions:
      1. "Discrimination" means the unlawful treatment of individuals based upon race, color, ethnic origin, gender, religion, age, or sexual preference. "Discrimination" does not include the unlawful treatment of individuals based upon developmental, physical, cognitive, mental, sensory or emotional impairment or any combination of these.
   e. This coverage does not apply if liability coverage for "personal and advertising injury" is excluded either by the provisions of the Coverage Form or any endorsement thereto.

7. Product Recall Expense
   a. SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage, o. Recall of Products, Work or Impaired Property is replaced 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".
      However, the exception to the exclusion does not apply to "product recall expenses" resulting from:
      (4) Failure of any products to accomplish their intended purpose;
      (5) Breach of warranties of fitness, quality, durability or performance;
      (6) Loss of customer approval, or any cost incurred to regain customer approval;
      (7) Redistribution or replacement of "your product" which has been recalled by like products or substitutes;
      (8) Caprice or whim of the insured;
      (9) A condition likely to cause loss of which any insured knew or had reason to know at the inception of this insurance;
      (10) Asbestos, including loss, damage or clean up resulting from asbestos or asbestos containing materials; or
      (11) 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. The following is added to SECTION II - LIABILITY, C. Who Is An Insured, paragraph 3.b.:
      "Product recall expense" arising out of any withdrawal or recall that occurred before you acquired or formed the organization.
c. The following is added to SECTION II - LIABILITY, D. Liability and Medical Expenses Limits of Insurance:

Product Recall Expense Limits of Insurance

a. The Limits of Insurance shown in the SUMMARY OF COVERAGE of this endorsement and the rules stated below fix the most that we will pay under this Product Recall Expense Coverage regardless of the number of:

1. Insureds;
2. "Covered Recalls" initiated; or
3. Number of "your products" withdrawn.

b. The Product Recall Expense Aggregate Limit is the most that we will reimburse you for the sum of all "product recall expenses" incurred for all "covered recalls" initiated during the policy period.

c. The Product Recall Each Occurrence Limit is the most we will pay in connection with any one defect or deficiency.

d. 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".

e. Any amount reimbursed for "product recall expenses" in connection with any one "occurrence" will reduce the amount of the Product Recall Expense Aggregate Limit available for reimbursement of "product recall expenses" in connection with any other defect or deficiency.

f. If the Product Recall Expense Aggregate Limit has been reduced by reimbursement of "product recall expenses" to an amount that is less than the Product Recall Expense Each 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.

g. Product Recall Deductible

We will only pay for the amount of "product recall expenses" which are in excess of the $500 Product Recall Deductible. The Product Recall Deductible applies separately to each "covered recall". The limits of insurance will not be reduced by the amount of this deductible.

We may, or will if required by law, pay all or any part of any deductible amount, if applicable. Upon notice of our payment of a deductible amount, you shall promptly reimburse us for the part of the deductible amount we paid.

The Product Recall Expense Limits of Insurance apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for the purposes of determining the Limits of Insurance.

d. The following is added to SECTION II - LIABILITY, E. Liability and Medical Expense General Conditions, 2. Duties in the Event of Occurrence, Offense, Claim or Suit:

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.

e. For the purpose of this endorsement, the following definitions are added to SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions:

1. "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".

2. "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".
f. This Product Recall Expense Coverage does not apply:

(1) If the "products - completed operations hazard" is excluded from coverage under this Coverage Part including any endorsement thereto; or
(2) To "product recall expense" arising out of any of "your products" that are otherwise excluded from coverage under this Coverage Part including endorsements thereto.

8. Unintentional Failure to Disclose Hazards
The following is added to SECTION II - LIABILITY, E. Liability and Medical Expenses General Conditions:
Representations
We will not disclaim coverage under this Coverage Part if you fail to disclose all hazards existing as of the inception date of the policy provided such failure is not intentional.

9. Unintentional Failure to Notify
The following is added to SECTION II - LIABILITY, E. Liability and Medical Expenses General Conditions, 2. Duties in the Event of Occurrence, Offense, Claim or Suit:
Your rights afforded under this Coverage Part 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", "property damage" or "personal and advertising injury" is not covered under this Policy.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.