

A G R E E M E N T

THIS AGREEMENT (“Agreement”) is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **Roll-Off Solutions, Inc., dba Little Dumpsters**, a Colorado corporation whose address is 34480 County Road 17, Elizabeth, CO 80107 (the “Contractor”), jointly (“the Parties”).

The Parties agree as follows:

1. COORDINATION AND LIAISON: The Contractor shall fully coordinate all services under the Agreement with the Executive Director of the Department of Transportation and Infrastructure (“Executive Director”) or, the Executive Director’s Designee in writing.

2. SERVICES TO BE PERFORMED:

a. As the Executive Director directs, the Contractor shall diligently undertake, perform, and complete all of the services set forth on **Exhibit A, Scope of Work** (the “Services”), in accordance with the terms and conditions set forth herein.

b. The Contractor is ready, willing, and able to provide the Services required by this Agreement.

c. The Contractor shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

3. TERM: The Agreement will commence on January 1, 2023 and will expire on December 31, 2025 (the “Term”). The term of this Agreement may be extended by the City under the same terms and conditions by a written amendment to this Agreement signed by the Parties. Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director in accordance with the terms and conditions of this Agreement.

4. COMPENSATION AND PAYMENT:

a. Compensation. The City shall pay and the Contractor shall accept as the sole compensation for the Services rendered and costs incurred under the Agreement the line item

amounts set forth in **Exhibit B**. Amounts billed by Contractor under this Agreement may not exceed the amounts set forth in **Exhibit B**.

b. Reimbursable Expenses: There are no reimbursable expenses allowed under the Agreement. All of the Contractor's expenses are contained in Exhibit B.

c. Invoicing and Payment: Contractor shall provide the City with an invoice in a format and with a level of detail acceptable to the City including all supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

d. Maximum Contract Amount:

(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation under this Agreement will not exceed **THIRTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$13,500,000.00)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at Contractor's risk and without authorization under the Agreement.

(2) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

5. STATUS OF CONTRACTOR: The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or Directors of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

6. TERMINATION:

a. The City has the right to terminate the Agreement (i) without cause upon ninety (90) days prior written notice to the Contractor, and (ii) for cause upon written notice to the Contractor effective immediately; provided, however, that if termination for cause is due to the

Contractor's failure to perform the Services in accordance with **Exhibit A, Scope of Work**, before the City may terminate the Agreement, the Contractor shall have the right to cure or correct such failure ("Right to Cure") within thirty (30) days' after receiving the City's written notice of termination. Notwithstanding the foregoing, the Contractor shall not have a Right to Cure for any failure by the Contractor to perform the Services in accordance with **Exhibit A** when such failure is egregious and/or repeated. Nothing gives the Contractor the right to perform Services under the Agreement beyond its termination in accordance with the terms of this Agreement.

b. Notwithstanding the preceding paragraph, the City may also terminate the Agreement if the Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

c. Upon termination of the Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for the Services duly requested and satisfactorily performed as described in the Agreement.

d. If the Agreement is terminated, the City is entitled to and will take possession of any materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

7. **EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor's performance pursuant to this Agreement, provision of any Services to the City, and any other transactions related to this Agreement. Contractor shall

cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. 20-276.

8. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event will any payment or other action by the City or Contractor constitute or be construed to be a waiver by the City or the Contractor, as applicable, of any breach of covenant or default that may then exist on the part of the other Party. No payment, other action, or inaction by the City or Contractor when any breach or default by the other Party exists will impair or prejudice any right or remedy available to it with respect to any such breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

9. INSURANCE:

a. General Conditions: Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the

Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

b. Proof of Insurance: Contractor may not commence Services or work relating to this Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. Additional Insureds: For Commercial General Liability, Business Auto Liability, Contractors Pollution Liability, Professional Liability (if required), and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. Waiver of Subrogation: For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.

e. Subcontractors and Subconsultants: Contractor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing Services required by this Agreement) procure and maintain coverage as approved by the Contractor and appropriate to their respective primary business risks considering the nature and scope of services provided.

f. Workers' Compensation and Employer's Liability Insurance:

Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

g. Commercial General Liability:

Contractor shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

h. Business Automobile Liability:

Contractor shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

i. Contractor's Pollution Liability:

Contractor shall maintain limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Policy to include bodily injury; property damage including loss of use of damaged property; defense costs including costs and expenses incurred in the investigation, defense or settlement of claims; and clean up costs. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

10. DEFENSE AND INDEMNIFICATION:

- a.** Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the Services performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

b. Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

c. Contractor will defend any and all Claims which may be brought or threatened against City, and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

11. TAXES, CHARGES AND PENALTIES: Except as otherwise provided herein, the City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the Services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

12. ASSIGNMENT; SUBCONTRACTING: The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Executive Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and will be cause for termination of this Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized

assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-Contractor, subcontractor or assign.

13. INUREMENT: The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

14. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

15. NO AUTHORITY TO BIND CITY TO CONTRACTS: The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

16. SEVERABILITY: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

17. CONFLICT OF INTEREST:

a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

b. The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion,

will determine the existence of a conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

18. NOTICES: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Executive Director of the Department of Transportation and Infrastructure
201 W. Colfax Avenue, Dept. 608
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

19. NO EMPLOYMENT OF WORKERS WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT:

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

b. The Contractor certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

(2) It will participate in the E-Verify Program, as defined in the Certification Ordinance, and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(3) It will not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

(6) It will comply with a reasonable request made in the course of an investigation by the City Auditor, under authority of D.R.M.C. 20-90.3.

c. The Contractor is liable for any violations as provided in the Certification Ordinance. If the Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying the Contractor from submitting bids or proposals for future contracts with the City.

20. DISPUTES: All disputes between the City and Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this Agreement.

21. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable laws, rules, regulations, and codes, of the United States and of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver (collectively, “Applicable Law”), which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

22. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.

23. COMPLIANCE WITH ALL LAWS: Contractor shall perform or cause to be performed all Services in full compliance with all Applicable Law.

24. LEGAL AUTHORITY: Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he or she has been fully authorized by Applicable Law and Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City represents that it possesses the legal authority to enter into this Agreement. Each Party shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of the other Party or the person signing the Agreement on behalf of the other Party to enter into the Agreement.

25. NO CONSTRUCTION AGAINST DRAFTING PARTY: The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not

be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

26. ORDER OF PRECEDENCE: In the event of any express and clear conflict between the language of the Agreement and the any of the Exhibits, the language of the Agreement controls.

27. INTELLECTUAL PROPERTY RIGHTS: The City and Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information to be created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, “Materials”), shall belong to the City. The Contractor shall disclose all such items to the City and shall assign such rights over to the City upon completion of the Project. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a “work made for hire” and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a “work made for hire,” the Contractor (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

28. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor’s obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

29. ADVERTISING AND PUBLIC DISCLOSURE: The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor’s advertising or public relations materials without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to Services

performed under the Agreement will be limited to Services that have been accepted by the City. The Contractor shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

30. CONFIDENTIAL INFORMATION: The Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, Contractor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. Contractor agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to Contractor shall be held in confidence and used only in the performance of its obligations under this Agreement. Contractor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent Contractor would to protect its own proprietary or confidential data. “Proprietary Data” shall mean any materials or information which may be designated or marked “Proprietary” or “Confidential”, or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to Contractor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

31. CITY EXECUTION OF AGREEMENT: The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

32. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: The Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Agreement (including any Exhibits) in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement (including any Exhibits) or any written amendment to the Agreement (including any Exhibits) will have any force or effect or bind the Parties.

33. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate

with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

34. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

35. PAYMENT OF CITY MINIMUM WAGE: Contractor shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Contractor expressly acknowledges that the Contractor is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by the Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

Exhibit List

Exhibit A – Scope of Work

Exhibit B – Compensation

Exhibit C – Certificate of Insurance

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Contract Control Number: DOTI-202265555-00
Contractor Name: Roll-Off Solutions, Inc.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

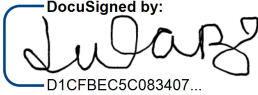
By:

By:

By:

Contract Control Number:
Contractor Name:

DOTI-202265555-00
Roll-Off Solutions, Inc.

By:  _____
DocuSigned by:
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Name: _____
Julia Barringer
(please print)

Title: _____
President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A

SCOPE OF WORK RECYCLING TRUCK/STAFF AUGMENTATION SERVICES

BACKGROUND

Beginning in January 2023, Solid Waste Management (“SWM”) customers (single family homes and apartments up to seven (7) units), will begin paying for all solid waste services based on their trash cart size. Weekly recycling and compost services will be included at no additional cost. Weekly recycling is slated to begin immediately in January.

As SWM transitions from bi-weekly recycling collection to weekly service, SWM will also grow its recycling service.

The scope of work for this contract will be for the household collection and hauling of recyclable materials for seven (7) routes per pickup day. Routes consist of approximately 1,000 homes per route. The number of houses per route is estimated. The City does not guarantee 1,000 houses per route, which will vary based on assigned routes. Total estimated households per week: Seven (7) routes per day, estimated 1,000 households per route, four (4) days per week collection = estimated 28,000 households per week.

CONTRACTOR RESPONSIBILITIES

- Monday - Thursday, working between 7:00 am - 7:00 pm with Friday included during holiday weeks.
- Contractor’s trucks and drivers must operate from their own facilities. Truck requirements: average tonnage for recycling shall be 10-13 tons/day and for trash 15-20 tons per day. Automated side load collection truck and/or rear loader with back of the truck cart tippers are the recommended trucks.
- Contractor is responsible for all maintenance on their vehicles. The Contractor shall have on hand at all times, and in good working order, sufficient vehicles and equipment as shall permit the Contractor to adequately and efficiently perform the contractual duties specified in this Agreement. All equipment shall be kept in good repair, appearance, and in a sanitary, clean condition at all times. Each vehicle shall carry appropriate tools and supplies to clean up litter and spillage that may occur during collection and disposal.
- All vehicles shall be sufficiently secure so as to prevent littering of material and spillage of fluids. No vehicle shall be overloaded. Each vehicle shall be properly licensed in the State of Colorado, and shall operate in compliance with all applicable local, state, and federal regulations.
- All trucks and drivers shall be provided for routes needed Monday – Thursday (and Friday, when applicable), regardless of calling out sick/vacation.
- Services shall be provided regardless of weather and service conditions, unless the City is closed. If needed, the City reserves the right to request emergency service outside of the times identified above.
- SWM shall provide Contractor with a residential customer service list identifying each customer by address. If updates need to be made to the customer service list, SWM will make a reasonable effort to provide updates to Contractor no later than five (5) days prior to the beginning of each month.
- Contractor will report to the City any address of within Awarded Service Area (see Exhibit A-1 for Service Areas) where a recycling cart of recycling materials are placed at the curbside and that is not on the then current Customer Service List. The City will thereafter update the Customer Service List as applicable.
- Contractors are responsible for collecting on customer’s day of service and completing designated routes.

- Contractor is responsible for addressing any missed collection complaints that pertain to that route. Missed Collection:
 - Missed collection requests shall be fulfilled by Contractor within twenty-four (24) hours. If daily missed collections cannot be fulfilled by 7:00 pm on the scheduled day of collection, Contractor must complete the following day.
 - If not collected within twenty-four (24) hours, the City may impose administrative charges per household not serviced in accordance with the Performance Standards below.
- Communication:
 - Contractor's point of contact shall attend weekly meetings with City and have availability for ongoing daily contact.
 - All customer communications will be handled through the City's Customer Service team. SWM will designate a point of contact who will communicate from the City's Customer Service team and Supervisors to the Contractor's point of contact. Such communication shall include, without limitation:
 - Missed collections
 - Contamination
 - Property damage
 - Route blocked (construction, branches, etc.)
- Contamination: Contractor's drivers shall tag any carts with visible contamination and shall not collect such carts. The address for any tagged cart must be documented via communication to Contractor's point of contact. City shall provide recycling contamination tags to the Contractor prior to the commencement of the agreement and on an as-needed basis throughout the duration of the agreement.
 - Contractor's driver must also document any addresses where contamination is seen while cart is being dumped into truck.
 - The City will provide, and Contractor shall attend, a mandatory training regarding the types of materials accepted in its programs.
 - The Contractor shall make reasonable efforts to ensure that only recyclable materials are delivered to the recycling facility
- Reporting: Contractor will complete a daily report including information regarding tonnage collected, number of carts collected, complaints addressed, carts tagged, carts not set out, property damage, and route issues, and shall submit it to the designated Contractor's point of contact for SWM. This report may also contain other information reasonably requested by the City.
 - Should the Contractor receive a notice for a violation of any law related to its Services under the Agreement, the Contractor shall report the violation to the City no later than twenty-four (24) hours following notification, including the type of violation, the date of notice, agency issuing the violation, any resulting fees or requirements, and planned resolution of the violation.
- Special Collections: Contractor will be provided with a list of addresses where Contractor must assist the customer with cart set out and collection. The Contractor's driver must retrieve the cart from the porch or driveway, service the cart at the truck, and return the cart to original location.
- Material Acceptance: Collected materials must end up at the City approved and designated facilities. *The City is responsible for disposal fees at such facilities and any applicable State surcharges.*
 - Failure of the Contractor to deliver materials to the City approved and designated facilities for diversion may be cause for the City to impose administrative charges in accordance with the Performance Standards below, and to terminate the Agreement.
 - If available, Contractor may utilize City approved recycling transfer station or 3rd party during normal operating hours.

- Services shall be conducted in accordance with the City's collection policies, practices, and obligations, and in accordance with any and all transfer and disposal facilities rules, regulations, and guidelines.
- Contractor will employ and contract with only competent, qualified, professional, courteous, conscientious and sober personnel to ensure Services satisfactory to the City. Contractor will ensure that all individuals performing Services on its behalf under this Agreement do so in a courteous professional and reliable manner.
- Contractor will prepare a contingency plan to provide vehicles and personnel necessary and sufficient to maintain uninterrupted Service during:
 - Mechanical breakdowns, including vehicles disabled on route
 - Extreme weather conditions
 - Road closures
 - Strikes, work stoppages, and other concerted job actions or similar events, and
 - Emergencies, including natural disasters
 - Contractor will provide City with a copy of the plan upon request
- The City reserves the right to inspect the Contractor's process and observe all Contractor operations related to the Agreement. Such inspections or observation may be by City employees or City-designated representatives.
- The Contractor is responsible for all operations, maintenance, repair, staffing, management, record keeping, reporting, compliance with laws and regulation, and other services necessary to meet its obligations of this Agreement to the City.

INVOICING AND PAYMENT

- Payment will be based upon the completion of the Services. The Rate set for each household shall include all the Contractor's costs of whatsoever nature including, without limitation:
 - Any labor, materials, supplies, equipment, and other things as necessary to complete the Services in accordance with this Agreement;
 - Pickup and transporting of cart container materials (some households have multiple carts) and delivery same day to a City defined and designated facility;
 - Waste streams (i.e., trash, compost, recycle) shall not be mixed;
 - Temporary sanitary facilities as needed;
 - Complete setup, removal, repair, cleaning, and maintenance of Contractor provided vehicles and trucks as required;
 - Obtaining and maintaining permits and licenses or other requirements required by state and local agencies to complete any facet of the Services;
 - Coordination and payment of any fines or fees associated with the Services, except as otherwise provided herein;
 - Advance coordination, notification and scheduling with City agencies, all affected businesses, and homeowners;
 - Staff training and tagging of uncollected or contaminated carts and the reporting of this information to the City.
- All cost for this work shall be included and no additional payment will be made.
- The City will receive the value of recycled materials, not the Contractor.

PERFORMANCE STANDARDS

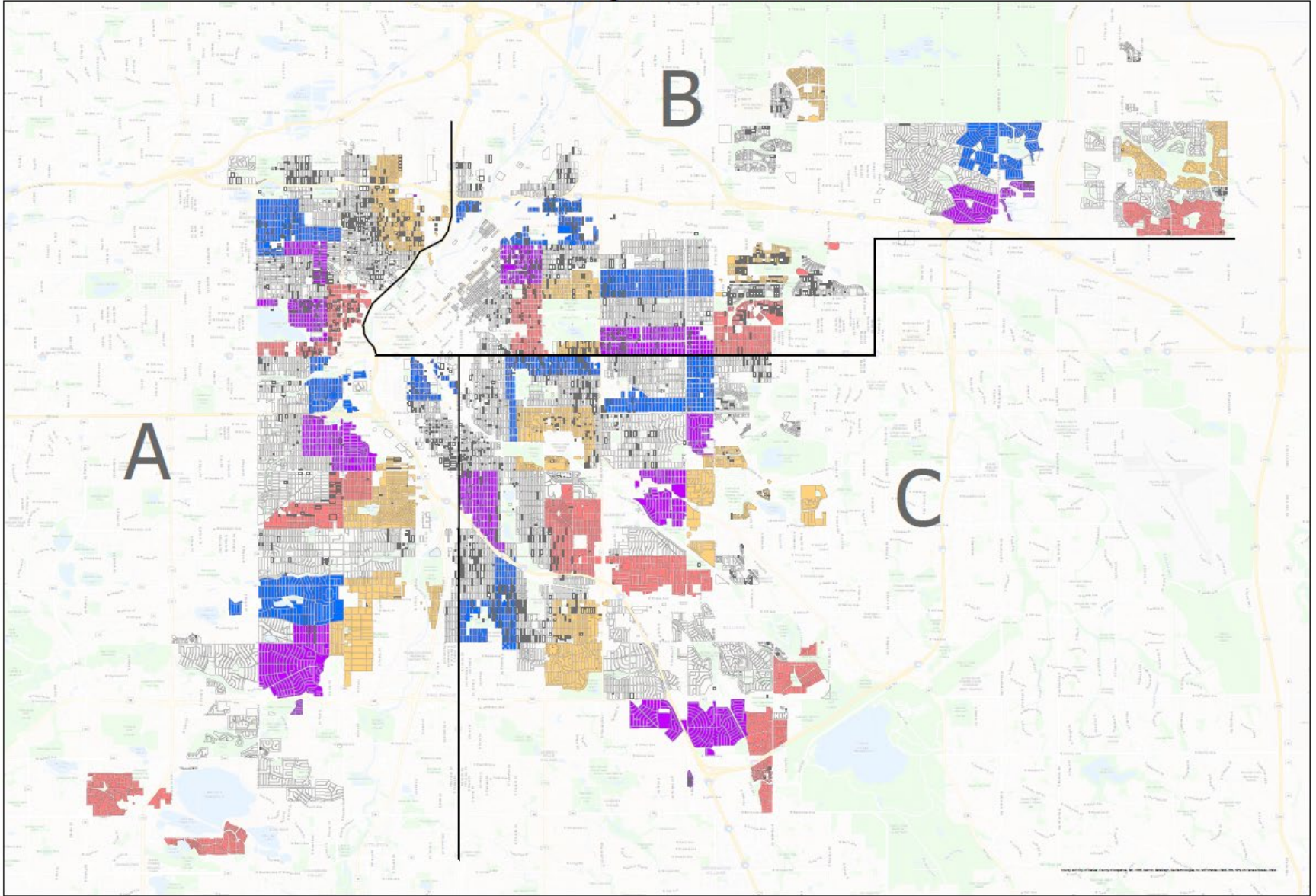
It is the intent of the Agreement to ensure that the Contractor provides a high quality level of services under this Agreement. To this end, any performance issues identified by the City and reported to the Contractor shall be promptly resolved within twenty-four (24) hours. Beginning sixty (60) days after commencement of this Agreement, the City may levy administrative charges for each improper and insufficient action related to any Services required by this Agreement including, but not limited to:

Performance Standard Violation	Administrative Charges/Violation
Failure to collect materials properly set out for collection on day of service	\$500 per household
Failure to resolve reported missed collection within 24 hours	\$100 per household
Failure to correct leakage from vehicles	\$1,000 per incident
Failure to deliver materials to the approved facility for diversion	\$5,000 per incident
Failure to submit accurate daily report	\$100 per incident
Failure to tag recycle carts for visible contamination	\$50 per incident

The City may assess administrative charges on a monthly basis and shall at the end of each month notify the Contractor in writing of the charges assessed and the basis for each assessment. In the event the Contractor wishes to contest such assessment it shall, within five (5) days after receiving such monthly notice, notify the City regarding its concerns. The Parties will make a good faith effort to resolve the dispute. However, if the Parties are unable to reach a resolution, the City shall issue a final determination regarding the dispute, which determination may be resolved by an administrative hearing pursuant to D.R.M.C. § 56-106.

EXHIBIT A-1

Solid Waste Management - Collection Areas



Monday Tuesday Wednesday Thursday

EXHIBIT B

COMPENSATION RECYCLING TRUCK/STAFF AUGMENTATION SERVICES

Residential Recycle Collection – Once per week - \$3.00 per household (customer address).
City to provide carts.

Monthly reconciliation and adjustment in payment shall be made based on new/adjusted household count.

a. Compensation payable under this Agreement shall be increased based on the percentage change in the Consumer Price Index annually commencing on January 1, 2024, rounded up to the hundredth of a percent, and rounded up to \$0.01 as to increase in Service rate. The CPI will be the Consumer Price Index (CPI-U) Water, Sewer, and Trash Collection services (Series ID: CUUR0000SEHG) as published by the US Department of Labor. If the source of the CPI is discontinued or substantially altered, the Parties may select another relevant price index published by the United State Government or by a reputable publisher of financial and economic indices. Sample Calculation of Collection Component Adjustment

Assumptions (for illustrative purposes only):

Current Collection Compensation (CC) = \$3.00

CPI in January 2023 = XXX

CPI in January 2024 = XXX

% Change in CPI (Δ CPI) = 3.58%

CPI Adjustment = (CC x Δ CPI)

(\$3.00 x 3.58%) = \$0.11

The new weekly collection compensation = \$3.00 + \$0.11 = \$3.11

b. A fuel surcharge will be added if diesel price exceeds \$5.50 per gallon (the “Fuel Floor Rate”). Fuel Surcharge calculation is tied directly to the national average price of diesel fuel as reported weekly by the Energy Information Administration of the U.S. Department of Energy Rocky Mountain (PADD4) in its Weekly Retail On-Highway Diesel Prices Index. For each \$0.05 increment per gallon above the Fuel Floor Rate, the per home collection rate will be increased by .3% of total charges. The increase will be for the duration that fuel is increased plus thirty (30) days to recover costs.

ENDORSEMENT

This endorsement forms a part of the policy to which it is attached. Please read it carefully.

**BUSINESS AUTO – ADDITIONAL INSURED
WHEN REQUIRED BY CONTRACT OR AGREEMENT**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

Section II - Liability Coverage A. - Coverage, 1. Who is an Insured, is amended to add:

- d. Any person or organization to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into, excluding contracts or agreements for professional services, which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of your operations or premises owned by or rented to you. However, the insurance provided will not exceed the lesser of:
1. The coverage and/or limits of this policy; or
 2. The coverage and/or limits required by said contract or agreement.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY SHALL APPLY AND REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US (WAIVER OF SUBROGATION) –
AUTOMATIC WHEN REQUIRED BY WRITTEN
CONTRACT OR AGREEMENT**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The **Transfer Of Rights Of Recovery Against Others To Us** Condition does not apply to any person(s) or organization(s) for whom you are required to waive subrogation with respect to the coverage provided under this Coverage Form, but only to the extent that subrogation is waived:

- A. Under a written contact or agreement with such person(s) or organization(s); and
- B. Prior to the "accident" or the "loss."

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY - OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

B. The following is added to the **Other Insurance** Condition in the Auto Dealers Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage and General Liability Coverages are primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY - OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

POLICY NUMBER: GLP2034823-10

COMMERCIAL GENERAL LIABILITY
CG 20 26 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

THOSE ENTITIES WITH WHOM THE NAMED INSURED HAS EXECUTED A WRITTEN CONTRACT

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but 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:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
 2. Available under the applicable limits of insurance;
- whichever is less.

This endorsement shall not increase the applicable limits of insurance.

POLICY NUMBER: GLP2034823-10

COMMERCIAL GENERAL LIABILITY
CG 24 04 A 12 19

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

- COMMERCIAL GENERAL LIABILITY COVERAGE PART
- ELECTRONIC DATA LIABILITY COVERAGE PART
- LIQUOR LIABILITY COVERAGE PART
- POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
- POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
- PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
- RAILROAD PROTECTIVE LIABILITY COVERAGE PART
- UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

SCHEDULE

Name Of Person(s) Or Organization(s):

ANY PRINCIPAL WHEREIN SUCH WAIVER HAS BEEN INCLUDED BEFORE LOSS AS PART OF A CONTRACTUAL UNDERTAKING BY THE NAMED INSURED

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions:**

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.