



Board of Public Works and Safety

Agenda Item

Cover Sheet

MEETING DATE: September 10, 2024

- Consent Agenda Item
- New Item for Discussion
- Previously Discussed Item
- Miscellaneous

ITEM #: 3

INITIATED BY: Savannah Wines

- Information Attached
- Bring Paperwork from Previous Meeting
- Verbal
- No Paperwork at Time of Packets

SERVICES AGREEMENT

This Services Agreement (hereinafter referred to as “Agreement”), entered into by and between the **City of Noblesville, Indiana, a municipal corporation** (hereinafter referred to as “City”) and **Greendell Landscape Solutions, Inc.** (hereinafter referred to as “Contractor”), and its successors and assigns, is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

SECTION I. INTERPRETATION AND INTENT

- 1.1 The “Agreement”, as referred to herein, shall mean this Agreement executed by City and Contractor, and shall include this Services Agreement and the **Exhibit A** attached hereto, and any written supplemental agreement or modification entered into between City and Contractor, in writing, after the date of this Agreement.
- 1.2 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between City and Contractor. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by City or Contractor which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both City and Contractor.
- 1.3 In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Contractor or other rights or obligations of City or Contractor the document or provision thereof expressing the greater quantity, quality or scope of service or imposing the greater obligation upon Contractor and affording the greater right or remedy to City, shall govern.
- 1.4 Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against City solely by virtue of City or City’s representatives having drafted all or any portion of this Agreement.
- 1.5 This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.

SECTION II. DUTIES OF CONTRACTOR

- 2.1 Contractor shall provide services as specified in **Exhibit A**, attached hereto and incorporated into this Agreement.

SECTION III. TERM

- 3.1 The term of this Agreement shall begin upon execution and terminate 12/31/2024 (“Termination Date”) unless terminated earlier in accordance with this Agreement.

SECTION IV. COMPENSATION

- 4.1 Contractor proposes to furnish all labor, materials and supplies in accordance with the conditions of this Agreement necessary to complete the work as defined in **Exhibit A**.

Compensation shall not exceed One Thousand Three Hundred Fifty Dollars and Zero Cents (\$1,350.00).

- 4.2 Funding for a multi-year agreement is not guaranteed. All of the City's obligations under this Agreement shall be subject to annual appropriation and shall not constitute a general obligation or indebtedness of the City.

SECTION V. GENERAL PROVISIONS

- 5.1 Independent Contractor. The parties agree that Contractor is an independent contractor as that term is commonly used and is not an employee of the City. As such, Contractor is solely responsible for all taxes and none shall be withheld from the sums paid to Contractor. Contractor acknowledges that it is not insured in any manner by City for any loss of any kind whatsoever. Contractor has no authority, express or implied, to bind or obligate City in any way.
- 5.2 Subcontracting.
Approval required. The parties agree that Contractor shall not subcontract, assign or delegate any portion of this Agreement or the services to be performed hereunder without prior written approval of City. In the event that City approves of any such subcontracting, assignment or delegation, Contractor shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. City shall have no obligation whatsoever toward such persons. Contractor shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Contractor of any responsibility for performing under this Agreement.
- 5.3 Necessary Documentation. N/A
- 5.4 Records; Audit. Contractor shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Agreement. Contractor shall make such materials available at its offices at all reasonable times during the Agreement period copies thereof, if requested, shall be furnished at no cost to City.
- 5.5 Ownership.
- 5.5.1 "Works" means works of authorship fixed in any tangible medium of expression by Contractor or its officers, employees, agents or subcontractors in the course of performing the services under this Agreement, including, but not limited to, computer programs, electronic art, computer generated art, notes, specifications, drawings, flow charts, memoranda, correspondence, records, notebooks, documentation, reports and charts, regardless of the medium in which they are fixed, and all copies thereof.
- 5.5.2 All Works made or created by Contractor, either solely or jointly with City, in the course of Contractor's performance of services under this Agreement shall be deemed to be works for hire and are and shall be the exclusive property of City.

At City's request, Contractor will execute all documents reasonably required to confirm or perfect ownership of such Works and any corresponding copyright rights in and to such Works in City. Without the prior written consent of City, Contractor shall not use, copy or prepare derivative works of the Works, or any parts of them, other than as related to the performance of this Agreement. During the performance of this Agreement, Contractor shall be responsible for loss or damage to the Works while they are in Contractor's possession or control. Any loss or damage shall be restored at Contractor's expense. City shall have free and unlimited access to the Works at all times and, upon demand, shall have the right to claim and take possession of the Works and all copies. Notwithstanding the foregoing, Contractor shall be entitled to retain a set of its work papers for archival purposes only, in accordance with applicable professional standards.

5.6 Insurance.

Minimum Insurance Requirements. Prior to commencing Work, the Contractor shall purchase and maintain from insurance companies lawfully authorized to do business in Indiana policies of insurance acceptable to the City, which afford the coverages set forth below. Insurance shall be written for not less than limits of liability specified or required by law, whichever coverage is greater, and shall include coverage for Contractor's indemnification obligations contained in this Agreement. Certificates of Insurance acceptable to the City shall be given to the City prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. Each policy must be endorsed to provide that the policy will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the City; provided however that such policies may be cancelled with only ten (10) days' prior notice for non-payment of premium. The required coverages and limits which Contractor is required to obtain are as follows:

A. Commercial General Liability

Limits of Liability:	\$2,000,000 General Aggregate
	\$2,000,000 Products & Completed Ops.
	\$1,000,000 Bodily Injury / Prop. Damage
	\$1,000,000 Personal / Advertising Injury
	\$1,000,000 Each Occurrence

B. Auto Liability

Limits of Liability:	\$500,000 Per Accident
Coverage Details	All owned, non-owned, & hired vehicles

C. Workers Compensation and Employer's Liability

As required by Indiana law.

giving written notice documenting the lack of funding, in which instance this Agreement shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. City agrees that it will make its best efforts to obtain sufficient funds, including but not limited to, requesting in its budget for each fiscal period during the term hereof sufficient funds to meet its obligations hereunder in full.

5.9 Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City and its board, agents and employees of any of them (“Indemnitees”) from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees and court costs and other expenses, arising out of or resulting from any negligent acts, errors, or omissions of the Work. The Contractor’s indemnification under this Section shall survive both final payment and the termination of this Agreement.

5.10 Notice. Any notice required to be sent under this Agreement shall be sent by internationally recognized overnight courier, certified mail, or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party):

To Contractor:
Greendell Landscape Solutions, Inc.
Attn: Gina Sichtung
749 W State Road 42
Mooresville, IN 46158

To City:
Noblesville Parks
Attn: Savannah Wines
16 S. 10th Street
Noblesville, IN 46060

Courtesy Copy:
City Attorney
16 S. 10th Street
Noblesville, IN 46060

5.11 Disputes. Contractor shall carry on all work required under this Agreement and maintain the schedule for services during all disputes or disagreements with City. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as Contractor and City may otherwise agree in writing. Should Contractor fail to continue to perform its responsibilities as regards all non-disputed work without delay, any additional costs incurred by City or Contractor as a result of such failure to proceed shall be borne by Contractor, and Contractor shall make no claim against the City for such costs. City may withhold payments on disputed items pending resolution of the dispute.

5.12 Non-discrimination. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The Contractor will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or

transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

5.13 Conflict of Interest.

5.13.1 Contractor certifies and warrants to City that neither it nor any of its officers, agents, employees, or subcontractors who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with City.

5.13.2 For purposes of compliance with IC 36-1-21, Contractor certifies and warrants to City that Contractor, or a person who wholly or partially owns Contractor, is not a relative, as that term is defined by IC 36-1-21-3, of an elected official of Noblesville, Indiana.

5.14 Non-contingent Fees. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty City shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

5.15 Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of fire, explosion, power blackout, natural disaster, strike, embargo, labor disputes, war, terrorism, acts of God, acts or decrees of governmental bodies or other causes beyond such party’s reasonable control (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall immediately be suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds sixty (60) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

5.16 Applicable Laws; Forum.

5.16.1 Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included in this Agreement are hereby incorporated by reference. This includes, but is not limited to, the Federal Civil Rights Act of 1964 and, if applicable, the Drug-Free Workplace Act of 1988. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by City and Contractor to determine whether the provisions of the Agreement require formal modification.

5.16.2 This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinance or Codes of the City of

Noblesville, County of Hamilton. Suit, if any, shall be brought in the State of Indiana, County of Hamilton.

- 5.17 Waiver. City's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of City's rights or remedies.
- 5.18 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.
- 5.19 Attorneys' Fees. Contractor shall be liable to City for reasonable attorneys' fees incurred by City in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Contractor, or from Contractor's failure to fulfill any provisions or responsibility provided herein.
- 5.20 Successors and Assigns. City and Contractor each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, Contractor shall not assign, sublet or transfer its interest in this Agreement without the written consent of City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of City or the Contractor.
- 5.21 Authority to Bind Contractor. Notwithstanding anything in this Agreement to the contrary, the signatory for Contractor represents that he/she has been duly authorized to execute agreements on behalf of Contractor and has obtained all necessary or applicable approval from the home office of Contractor to make this Agreement fully binding upon Contractor when his/her signature is affixed and accepted by City.
- 5.22 Debarment and Suspension
- 5.22.1 Contractor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from or ineligible for participation in any Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Contractor.
- 5.22.2 Contractor certifies, by entering into this Agreement, that it does not engage in investment activities in Iran as more particularly described in IC 5-22-16.5.
- 5.22.3 Contractor shall provide immediate written notice to City if, at any time after entering into this Agreement, Contractor learns that its certifications were erroneous when submitted, or Contractor is debarred, suspended, proposed for debarment, declared ineligible, has been included on a list or received notice of

intent to include on a list created pursuant to IC 5-22-16.5, voluntarily excluded from or becomes ineligible for participation in any Federal assistance program. Any such event shall be cause for termination of this Agreement as provided herein.

5.22.4 Contractor shall not subcontract with any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in any Federal assistance programs by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana.

5.23 Compliance With E-Verify Program. Pursuant to IC 22-5-1.7, Contractor shall enroll in and verify the work eligibility status of all newly hired employees of Contractor through the E-Verify Program (“Program”). Contractor is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.

5.23.1 Contractor and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that Contractor or its subcontractor subsequently learns is an unauthorized alien. If Contractor violates this Section 5.23, City shall require Contractor to remedy the violation not later than thirty (30) days after City notifies Contractor. If Contractor fails to remedy the violation within the thirty (30) day period, City shall terminate the contract for breach of contract. If City terminates the contract, Contractor shall, in addition to any other contractual remedies, be liable to City for actual damages. There is a rebuttable presumption that Contractor did not knowingly employ an unauthorized alien if Contractor verified the work eligibility status of the employee through the Program.

5.23.2 If Contractor employs or contracts with an unauthorized alien but City determines that terminating the contract would be detrimental to the public interest or public property, City may allow the contract to remain in effect until City procures a new contractor.

5.23.3 Contractor shall, prior to performing any work, require each subcontractor to certify to Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. Contractor shall maintain on file a certification from each subcontractor throughout the duration of the Project. If Contractor determines that a subcontractor is in violation of this Section 5.23, Contractor may terminate its contract with the subcontractor for such violation.

5.23.4 Pursuant to IC 22-5-1.7 a fully executed affidavit affirming that the business entity does not knowingly employ an unauthorized alien and confirming Contractor's enrollment in the Program, unless the Program no longer exists, shall be filed with City prior to the execution of this Agreement. This Agreement shall not be deemed fully executed until such affidavit is filed with the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates subscribed below.

GreenDall Landscape ("Contractor")
Solutions

By: J. Daniel Kayf

Date: 8-13-24

Printed: J. Daniel Kayf

Title: CEO

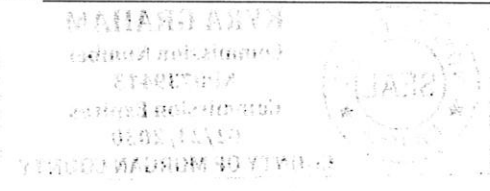
City of Noblesville

By: Savannah Wines

Date: 08/15/2024

Printed: Savannah Wines

Title: Parks Director



E-Verify Affidavit

Pursuant to Indiana Code 22-5-1.7-11, the Contractor entering into a contract with the City is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program. The Contractor is not required to verify the work eligibility status of all its newly hired employees through the E-Verify program if the E-Verify program no longer exists.

The undersigned, on behalf of the Contractor, being first duly sworn, deposes and states that the Contractor does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with the City, the undersigned Contractor will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

(Contractor): GreenDell Landscaping Solutions

By (Written Signature): J. Daniel Kanzler

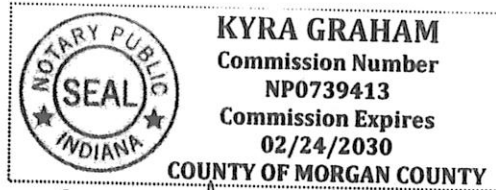
(Printed Name): J. Daniel Kanzler

(Title): CFO

Important - Notary Signature and Seal Required in the Space Below

STATE OF Indiana
COUNTY OF Morgan

SS:



20 24 Subscribed and sworn to before me this 13th day of August.

My commission expires: 02/24/2030 (Signed) Kyra Graham

a. Residing in Morgan County, State of Indiana

Quote

Greendell Landscape Solutions, Inc.
 749 W State Road 42
 (317) 996-2826

Order Number: 0189770

Order Date: 8/6/2024

Salesperson: GLS

Customer Number: CITNOB

Sold To:

CITY OF NOBLESVILLE PARKS & RE
 701 Cicero Rd
 NOBLESVILLE, IN 46060

Confirm To:

Ship To:

CITY OF NOBLESVILLE PARKS & RE
 701 Cicero Rd
 NOBLESVILLE, IN 46060

Customer P.O.	Ship VIA	F.O.B.	Terms
	123	GLS	NET 30

Item Code	Unit	Ordered	Shipped	Back Order	Price	Amount
PORCHP	EACH	18.000	0.000	0.000	75.00	1,350.00
WINTER PORCH POT KIT			Whse: 000			
ON SITE SETUP, 3-4 EMPLOYEES, 3-5 HOURS						
WEEK OF NOVEMBER 18TH						

Net Order:	1,350.00
Less Discount:	0.00
Freight:	0.00
Sales Tax:	0.00
Order Total:	1,350.00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO ENHANCEMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:
BUSINESS AUTO COVERAGE FORM

The coverages provided by this endorsement are subject to all of the terms and provisions of the **BUSINESS AUTO COVERAGE FORM** except as specifically amended by this endorsement.

1. Broadened Who Is An “Insured”

SECTION II – LIABILITY COVERAGE - Paragraph A. 1. – Who Is an “Insured” is amended to include the following:

- d.** Any newly acquired or formed legally incorporated entity of which you own more than 50% of the voting stock during the period for which this endorsement is effective.
- e.** Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or a majority interest.

However, **Who Is an “Insured”** does not include any entity or organization that is an “insured” under any other similar insurance or would be an “insured” under such a policy but for its termination or the exhaustion of its limits of insurance.

Coverage for newly acquired or formed entities or organizations is afforded only for the first 180 days after you acquire or form the entity or organization or until the end of the policy period, whichever comes first.

Coverage does not apply to “bodily injury” or “property damage” that results from an “accident” that occurred before you formed or acquired that entity or organization.

2. Employees As Insureds

SECTION II – LIABILITY COVERAGE – Paragraph A. 1. – Who Is an Insured is amended to include the following:

- f.** any “employee” of yours is an “insured” while using, in your business or your personal affairs, a covered “auto” you do not own, hire or borrow.
- g.** any “employee” of yours is an “insured” while using an “auto” hired or rented under a contract or agreement in that “employee’s” name, with your permission, while performing duties related to the conduct of your business.

3. Additional Insured By Contract, Agreement or Permit

SECTION II – LIABILITY COVERAGE – Paragraph A.1. – Who Is an “Insured” is amended to include the following:

- h.** any person or organization with whom you have agreed in writing in a contract, agreement or permit to provide insurance such as is afforded under this policy.

However, this provision does not apply unless the written contract or agreement has been executed or the permit has been issued prior to the “bodily injury” or “property damage”.

The insurance provided to the Additional Insured in section 3 above applies on either a primary basis or a primary and noncontributory basis when required by written contract or agreement.

4. Supplementary Payments

SECTION II – LIABILITY COVERAGE – Paragraph A.2.a. items (2) and (4) are replaced by the following:

- (2)** Up to \$5,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an “accident” we cover. We do not have to furnish these bonds.
- (4)** All reasonable expenses incurred by the “insured” at our request, including actual loss of earnings up to \$500 a day because of time off from work.

5. Amended Fellow Employee Exclusion

SECTION II – LIABILITY COVERAGE – Paragraph B.5. does not apply if the “bodily injury” results from the use of a covered “auto” you own or hire.

ADDITIONAL COVERAGES 6 – 14 APPLY IF PHYSICAL DAMAGE COVERAGE IS PROVIDED FOR THE COVERED “AUTO”.

6. Expense To Return Stolen Auto

SECTION III – PHYSICAL DAMAGE COVERAGE – Paragraph A. Coverage is amended to include the following:

We will pay the expense of returning a stolen covered “auto” to you.

7. Extended Towing and Locksmith Expense

SECTION III – PHYSICAL DAMAGE COVERAGE – Paragraph A.2. Towing is replaced by the following:

We will pay for towing and labor costs, including emergency locksmith services, incurred each time a covered “auto” is disabled. All labor must be performed at the place of disablement.

The most we will pay under **Extended Towing and Locksmith Expense** is \$250 per occurrence.

No deductible applies to **Extended Towing and Locksmith Expense**.

8. Personal Effects Coverage

SECTION III – PHYSICAL DAMAGE COVERAGE – Paragraph **A.4.** the following **Coverage Extension** is added:

We will pay up to \$500 for “personal effects” stolen with a covered “auto”.

“Personal effects” as used in this extension means tangible property that is worn or carried by an “insured”. “Personal effects” does not include tools, jewelry, money or securities.

No deductible applies to **Personal Effects Coverage**.

9. Fire Department Service Charge

SECTION III – PHYSICAL DAMAGE COVERAGE – Paragraph **A.4.** the following **Coverage Extension** is added:

We will pay up to \$500 for expenses you incur when a fire department is called to save or reduce further damage to a covered “auto”.

No deductible applies to **Fire Department Service Charge**.

10. Transportation Expenses, Loss of Use Expenses

We will pay only for those covered “autos” for which you carry Physical Damage Coverage. If you do not have comprehensive or collision coverage you do not have these extensions of coverage.

SECTION III – PHYSICAL DAMAGE COVERAGE EXTENSIONS– Paragraph **4.** items **a.** and **b.** are replaced by the following:

a. Transportation Expenses

We will pay up to \$50 per day to a maximum of \$2,250 for temporary transportation expense incurred by you because of “loss” to a covered “auto”. We will pay for temporary transportation expenses incurred beginning immediately after the “loss” and ending, regardless of the policy’s expiration, when the covered “auto” is returned to use or we pay for its “loss”.

No deductible applies to **Transportation Expenses**.

b. Loss of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an “insured” becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. The most we will pay for any expenses for loss of use is \$50 per day, to a maximum of \$2,250.

No deductible applies to **Loss of Use Expenses**.

Exclusion B. 5 of the Business Auto Coverage Policy is replaced by the following:

5. We will not pay for “loss” to a covered “auto” due to “diminution in value”;
except:

We cover “diminution in value” due to a covered loss for non-owned temporarily rented for 45 days or less vehicles for which there is a written, signed rental agreement obligating the “insured” to pay for such damage. We also provide loss of use of the rented auto for which the insured is legally liable for up to an additional \$50 per day with a maximum of \$2250.

11. Airbag Coverage

SECTION III – PHYSICAL DAMAGE COVERAGE, B. Exclusions is amended by adding the following:

Exclusion 3.a. does not apply to the accidental discharge of an airbag.

No deductible applies to **Airbag Coverage**.

12. Communication Equipment Coverage

SECTION III – PHYSICAL DAMAGE COVERAGE, B. Exclusions is amended by adding the following:

Exclusion 4 does not apply to “loss” to any electronic equipment that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound. This coverage applies only if the equipment is permanently installed in the covered “auto” at the time of “loss”, or the equipment is removable from a housing unit which is permanently installed in the covered “auto” at the time of “loss” and such equipment is designed to be solely operated by use of the power from the “auto’s” electrical system in or upon the covered “auto”.

This coverage will pay with respect to a covered “auto” for “loss” to any accessories used with the electronic equipment described above. However, this does not include tapes, records or discs.

No deductible applies to **Communication Equipment Coverage**.

13. Loan/Lease Gap Coverage

SECTION III – PHYSICAL DAMAGE COVERAGE, C. Limit of Insurance is amended to include the following:

In the event of a total “loss” to a covered “auto” of the private passenger or light truck (10,000 lbs. or less gross vehicle weight) type, to which a loss payee applies, we will pay any unpaid amount due on the lease or loan for a covered “auto”, less:

- a. The amount paid under the Physical Damage Coverage Section of the policy; and
- b. Any:
 1. Overdue lease/loan payments at the time of the “loss”;
 2. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
 3. Security deposits not returned by the lessor;
 4. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease;
 5. Carry-over balances from previous loans or leases;
 6. The dollar amount of any unrepaired damage which occurred prior to the total “loss” of the covered “auto”;
 7. All refunds paid or payable to you as a result of the early termination of a lease agreement or as a result of the early termination of any warranty or extended service agreement on a covered “auto”.

SECTION IV – BUSINESS AUTO CONDITIONS, A. Loss Conditions is amended to include the following:

The insurance provided by this **Loan/Lease Gap Coverage** shall apply only to the original loan or lease agreement written on and directly related to a covered “auto”.

14. Waiver of Depreciation – Private Passenger Vehicles

SECTION III – PHYSICAL DAMAGE COVERAGE, C. Limit of Insurance is deleted and replaced by the following:

- a. For current model year and previous model year vehicles, determined at the date of loss, the most we will pay is the replacement cost of a total “loss” or stolen “auto” if replaced within 90 days of the date of “loss”. If not replaced within 90 days, Item b. applies.
- b. The most we will pay for “loss” in any one “accident” is the lesser of:
 - i. The actual cash value of the damaged or stolen property as of the time of the “loss”; or
 - ii. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total “loss”.

If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

15. Hired Auto Physical Damage

If hired “autos” are covered “autos” for Liability Coverage and if Comprehensive, Specified Causes of Loss or Collision coverage are provided for any “auto” you own, then the Physical Damage coverages provided are extended to “autos” you hire, subject to the following limit:

The most we will pay for any one “loss” is the lesser of the following:

- a. \$50,000 per “accident”, or
- b. Actual Cash Value, or
- c. The cost of repair.

The deductible will be equal to the largest deductible applicable to any owned “auto” for that coverage. No deductible applies to “loss” caused by fire or lightning.

This **Hired Auto Physical Damage** coverage is excess over any other collectible insurance.

Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered “auto” you own.

16. Waiver of Deductible

SECTION III – PHYSICAL DAMAGE COVERAGE, D. Deductible is deleted and replaced by the following:

For each covered “auto”, our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to “loss” caused by fire or lightning.

Any Collision Coverage deductible amount shall not apply to “loss” caused by collision between your covered “auto” and an “auto” other than a covered “auto” provided:

- a. the “loss” to the covered “auto” is greater than the deductible amount; and
- b. the owner or operator of such other “auto” has been identified ; and
- c. the owner or operator of such other “auto” is legally liable for the “loss” to your covered “auto”; and

- d. there is a valid Property Damage Liability Insurance Policy applicable at the time of the “accident” with respects to the person or organization legally responsible for such “loss” to the covered “auto”.

No deductible applies to glass damage if the glass is repaired rather than replaced.

17. Amended Deductible Provision

SECTION III – PHYSICAL DAMAGE COVERAGE, D. Deductible, the following is added:

If a “loss” covered under this Business Auto Coverage Form also involves a “loss” to other property from the same “accident” which is covered under a Commercial Property or Commercial Inland Marine Coverage Part issued by us for you, only the highest deductible applicable to those coverages will be applied to the “accident”.

18. Amended Duties in the Event of Accident, Claim, Suit or Loss

SECTION IV – BUSINESS AUTO CONDITIONS, A.2.a. is amended to include the following:

This duty applies only when the “accident”, claim, “suit” or “loss” is first known to:

- a. You, if you are an individual;
- b. A partner, if you are a partnership;
- c. A member or manager, if you are a limited liability company or
- d. An “executive officer” or insurance manager, if you are a corporation.

19. Unintentional Failure to Disclose Hazards

SECTION IV – BUSINESS AUTO CONDITIONS, B. 2. – General Conditions – Concealment, Misrepresentation Or Fraud is amended to include the following:

If you unintentionally fail to disclose any hazards or exposures existing as of the inception date of the policy, we will not deny coverage under this Business Auto Coverage Form because of such failure. However, you must report the undisclosed hazard or exposure as soon as practicable after its discovery and we have the right to collect additional premium for same.

20. Extended Employee Hired Auto Physical Damage

SECTION IV – BUSINESS AUTO CONDITIONS, 5. b. is deleted and replaced by the following:

- b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered “autos” you own:
 - i. Any covered “auto” you lease, hire, rent or borrow; and

- ii. Any covered “auto” hired or rented by your “employee” under a contract in that individual “employee’s” name, with your permission, while performing duties related to the conduct of your business.

However, any “auto” that is leased, hired, rented or borrowed with a driver is not a covered “auto”.

21. Drive Other Car Coverage for Executive Officers

SECTION II – LIABILITY COVERAGE is amended as follows:

Any “auto” you don’t own, hire or borrow is a covered “auto” for Liability Coverage while being used by any of your “executive officers” except:

- a. Any “auto” owned by that “executive officer” or by any member of his or her household, or
- b. Any “auto” used by that “executive officer” while working in a business of selling, servicing, repairing or parking “autos”.

The following is added to **Who Is An Insured**:

Any “executive officer” is an “insured” while using any covered “auto”.

Changes in Auto Medical Payments and Uninsured and Underinsured Motorists Coverages If These Coverages Are Included In the Business Auto Coverage Form

The following is added to **Who Is An Insured**:

Any individual “insured” and his or her “family members” are “insured” while “occupying” or while a pedestrian when being struck by any “auto” you don’t own except:

Any “auto” owned by that individual or by any “family member”.

SECTION III – PHYSICAL DAMAGE COVERAGE is amended as follows:

Any private passenger type “auto” you don’t own, hire or borrow is a covered “auto” while in the care, custody or control of any “executive officer” except:

- a. Any “auto” owned by that “executive officer” or by any member of his or her household, or
- b. Any “auto” used by that “executive officer” while working in a business of selling, servicing, repairing or parking “autos”.

This **Drive Other Car Coverage for Executive Officers** is excess over any other collectible insurance.

Subject to the above, we will provide coverage equal to the broadest coverage applicable to any covered "auto".

Additional Definitions:

As used in this BUSINESS AUTO ENHANCEMENT ENDORSEMENT:

"Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document and that person's spouse while a resident of the same household.

"Family member" means a person related to the "executive officer" by blood, marriage or adoption who is a resident of the "executive officer's" household, including a ward or foster child.