

RESOLUTION NO. R-2018-226

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE AN INCREASE IN THE AUTHORIZED ANNUAL EXPENDITURE TO HOWARD E. NYHART COMPANY, INCORPORATED, FROM \$45,000.00 TO \$85,000.00, FOR ACTUARY SERVICES.

WHEREAS, the City requires actuary services as the sponsor of the City's three pension plans; and

WHEREAS, a Professional Agreement for actuary services to be provided by Nyhart Company, Incorporated ("Nyhart"), was executed on March 23, 2017 in the amount of \$48,500.00, with additional renewal periods; and

WHEREAS, the first renewal period, March 23, 2018 to March 22, 2019, was approved via City Manager Memo PR-18-155 in the amount of \$45,000.00; and

WHEREAS, the analysis for the police pension plan is completed at a cost of \$27,653.75, and the cost to complete the analysis of the fire pension plan and the general employees' pension plan is estimated to be an additional \$20,000.00 each; and

WHEREAS, the estimated annual cost for the continuation of actuary services is now \$85,000.00, requiring City Commission approval; and

WHEREAS, Nyhart has been and continues to provide satisfactory services; and

WHEREAS, the total amount for Actuary Services to include the first year (\$48,500.00), the initial renewal period amount (\$45,000.00), and the requested additional amount (\$40,000.00) brings the total sum to an estimated \$133,500.00.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA.

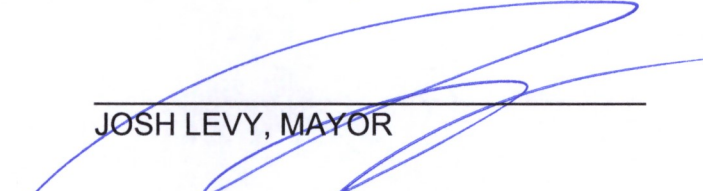
Section 1: That the foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are incorporated in this Resolution.

Section 2: That it approves an increase in the annual amount authorized to be paid to Nyhart from \$45,000.00 to \$85,000.00.

A RESOLUTION INCREASE THE ANNUAL AMOUNT FROM \$45,000.00 TO \$85,000.00 FOR ACTUARY SERVICES PROVIDED BY NYHART.


Section 3: That this Resolution shall be in full force and effect immediately upon its passage and adoption.

PASSED AND ADOPTED this 3 day of July, 2018.



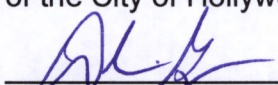
JOSH LEVY, MAYOR


ATTEST:



PATRICIA A. CERNY, MMC, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY for the use and reliance of the City of Hollywood, Florida, only.



DOUGLAS R. GONZALES, CITY ATTORNEY 

NO RESO

THE HOWARD E. NYHART COMPANY, INC. ("NYHART")
ADMINISTRATIVE SERVICE AGREEMENT ("AGREEMENT")

Agreement Between Nyhart and City of Hollywood:

Plan Sponsor Name:	City of Hollywood
Plan Sponsor Address:	2600 Hollywood Blvd., Suite 419 Hollywood, FL 33022-9045
Plan Sponsor Phone:	(954) 921-3628
Plan Sponsor Fax:	(954) 921-3487
Plan Names:	City of Hollywood Employees' Retirement Fund; City of Hollywood Police Officers' Retirement System and City of Hollywood Firefighters' Pension Fund

Services to be provided by Nyhart

All services to be provided by Nyhart are subject to your full cooperation and prompt submission of complete and accurate information. Nyhart will rely on any and all information that you provide pursuant to this agreement and on file at our office as to accuracy and completeness. Nyhart will have no responsibility to verify such information and no liability for errors or omissions as a result of relying on such information. Nyhart accepts no liability for any services provided by another entity prior to the date this agreement is effective.

Nyhart is not a law firm or a public accounting firm and does not provide legal or tax advice. Therefore, Nyhart recommends that Plan Sponsor's legal counsel review any documents it prepares. Further, Plan Sponsor should consult with an attorney experienced in employee benefit plan matters regarding any questions or concerns that Plan Sponsor may have relative to the Plan's qualification, coverage of employees, and any other issue of a legal nature.

Nyhart will provide the following services:

- Plan design costing.

Fees for Services Provided by Nyhart

Fees will be on a Time & Materials basis, using the following rates:

Senior Actuaries	\$325
Actuaries	\$275
Actuarial Analyst	\$225

Any additional work completed by Nyhart due to incomplete or inaccurate information or due to revisions/requests by the Plan Sponsor that are not in the normal course of providing such services, will be billed at hourly rates and are in addition to the fees stated above.

Fees will be billed in monthly increments and each invoice will be due upon receipt and will be due upon receipt. If any invoice remains unpaid for longer than 90 days from the date of the invoice, Nyhart may either suspend the provision of the Services until payment is received, or terminate this Agreement with immediate effect. Failure of Nyhart to exercise any remedy set forth above shall not prevent Nyhart from doing so with respect to any future unpaid invoice or taking any other actions available to Nyhart under law.

Relationship of the Parties

The legal relationship between Plan Sponsor and Nyhart shall be exclusively that of principal and agent. The parties hereto specifically agree and acknowledge that Nyhart shall not:

- Have discretionary authority or control over, or hold, any Plan assets;
- Be responsible for ensuring that the Plan complies with any requirement to which the Plan is subject under the Internal Revenue Code or other applicable law, or be liable to the Plan, Plan Sponsor, or any person if the Plan fails to comply with any such requirement;
- Have any duty or authority to enforce the payment of any contribution owed under the Plan;
- Be responsible for the adequacy of the trust established as part of the Plan, or be liable for any benefits owed under the Plan;
- Exercise discretion as to any Plan function, including the administration of the Plan; or
- Have any obligation to perform any service not specified in this Agreement or otherwise agreed to in writing by the parties (regardless of whether such service may be considered "customary" services provided by Nyhart).

Plan Sponsor agrees that Nyhart shall use all information and data supplied by or on behalf of the Plan Sponsor without having independently verified the accuracy or completeness of it except to the extent required by generally accepted professional standards and practices. If any documentation or information supplied to Nyhart at any time is incomplete, inaccurate or not up-to-date, or its provision is unreasonably delayed, Nyhart will not be responsible for any delays or liability arising therefrom, and will be entitled to charge the Plan Sponsor in respect of any resulting additional work actually carried out.

The Plan Sponsor further understands that the failure to provide, or cause to provide, complete, accurate, up-to-date, and timely documentation and information to Nyhart, whether intentional or by error, could result in an impairment of Nyhart's services.

Plan Sponsor Responsibilities and Representations

- a) Plan Sponsor acknowledges that it is the "Plan Administrator" of the Plans for purposes of the Internal Revenue Code and agrees to undertake the duties of the Plan Administrator and subcontracts Nyhart to perform the ministerial services defined in this Agreement in accordance with Plan Sponsor's directions or policies established by Plan Sponsor.
- b) The Plan Sponsor has general responsibilities with respect to the Plans, including
 - Providing all information required by Nyhart to perform its services under this Agreement on a timely basis;
 - Reviewing the Plan document, plan summary to be provided to participants, if applicable, and other legal documents, with legal counsel if applicable, and providing executed copies to Nyhart on request;
 - Communicating Plan details to employees and answering employee questions;
 - The Plan Administrator is solely responsible for ensuring adequate funding of the Plan; and
 - Authorizing plan disbursements and ensuring accuracy of information provided.

Dispute Resolution

Nyhart and Plan Administrator agree that before commencing any action or proceeding with respect to any dispute between the parties arising out of or relating to this Agreement or the Services they first shall attempt to settle such dispute through consultation and negotiation in good faith and in a spirit of mutual cooperation. Any such dispute will be submitted in writing to a panel of one (1) senior executive of each of Nyhart and Plan Sponsor, who will promptly meet and confer in an effort to resolve such dispute. Each party's executive will be identified by notice to the other, and may be changed at any time thereafter by notice to the other. Any mutually agreed decisions of the executives will be final and binding on the parties. In the event the executives are unable to resolve any dispute within thirty (30) days after submission to them, either party may then refer such dispute to mediation by a mutually acceptable mediator to be chosen by Nyhart and Plan Administrator within forty-five (45) days after written notice by either party demanding mediation. Neither party may unreasonably withhold consent to the selection of a mediator. All communications and

discussions in furtherance of this paragraph shall be treated as confidential settlement negotiations, which are not subject to discovery. The costs of the mediator shall be shared equally, but each party shall pay its own attorneys' fees.

Any dispute which cannot be resolved between the parties through negotiation, mediation or other form of alternative dispute resolution within six months of the date of the initial demand for mediation by one of the parties may then be submitted to a court of competent jurisdiction. To facilitate an expeditious and economical judicial resolution of such dispute, Nyhart and Plan Administrator agree to waive and not to demand a trial by jury, and not to include any employee, officer, director or trustee of either as a party, in any action, proceeding or counterclaim relating to such dispute. Nothing in this section will prevent either party from resorting to judicial proceedings if interim relief from a court is necessary to prevent serious and irreparable injury to that party or to others. Any claim, action or proceeding against Nyhart will be barred unless Plan Administrator initiates the dispute resolution procedures outlined below within one year of first discovering the act, error or omission that is the basis for such claim.

Indemnification and Limitation of Liability

The liability of Nyhart, in tort, contract or otherwise, to Plan Sponsor, a Plan and the officers, directors, trustees, employees or shareholders of any of them, and to any other third party, for all claims arising in connection with or contributed to by this Agreement and the Services (including without limitation multiple claims arising out of or based upon the same act, error or omission, or series of continuous, interrelated or repeated acts, errors or omissions) shall not include loss of profit or incidental, consequential, indirect, punitive or similar damages and shall be further limited to the amount of fees for Services received by Nyhart under this Agreement for the twelve (12) months immediately preceding the act, error or omission upon which such liability is based. Nothing in this paragraph shall apply to any liability which has been finally determined to have arisen from willful misconduct or fraud on the part of Nyhart or which cannot lawfully be limited, modified or excluded.

Nyhart shall indemnify the Plan and/or Plan Administrator from and against any and all claim, loss, liability or damage (including attorney's fees) which the Plan and/or Plan Administrator may incur: (i) arising out of any material breach by Nyhart of any of its material obligations, representations or warranties contained in this Agreement; or (ii) arising out of Nyhart's negligence, gross negligence or willful, fraudulent, or criminal misconduct associated with its performance of services under this Agreement. The parties further recognize that clerical errors and variations may occur. When discovered, they will be corrected or adjusted by Nyhart, in accordance with its normal procedures, to the extent reasonable and possible.

Acceptance

The items and conditions of this Agreement are agreed to and accepted by Plan Sponsor on behalf of the Plan. This Agreement is effective only when signed by all parties.

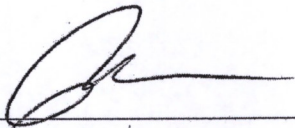
Plan Sponsor

By: _____

Printed Name: _____

Date: _____

Nyhart

By:  _____

Printed Name: Thomas L. Totten _____

Date: 05/18/18 _____

ACTUARY SERVICES AGREEMENT

CITY OF HOLLYWOOD, a municipal corporation
of the State of Florida

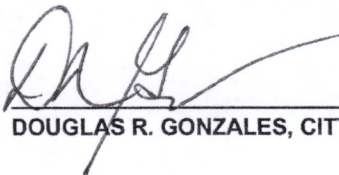
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Approved By: 

Date: _____

DR. WAZIR A. ISHMAEL, PH.D.
CITY MANAGER

APPROVED AS TO FORM & LEGAL
SUFFICIENCY for the use and reliance of the
City of Hollywood, Florida, only.



Date: 5/16/18

DOUGLAS R. GONZALES, CITY ATTORNEY



CITY OF HOLLYWOOD, FLORIDA
PROCUREMENT SERVICES DIVISION

CITY OF HOLLYWOOD
PROCUREMENT SERVICES
DIVISION

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DATE: April 11, 2018

FILE: PR-18-155

TO: Wazir Ishmael, Ph.D.
City Manager

VIA: *GPK* George R. Keller, Jr.
Assistant City Manager/ Public Safety
Interim Assistant City Manager for Finance & Administration

FROM: *PAB 4/11/2018* Paul A. Bassar
Director of Procurement Services & Contract Compliance

SUBJECT: Actuary Services Agreement Requiring A Change Order To Increase 1st Year Amount By \$6,500.00 And To Exercise The Next Renewal Option.

ISSUE:

The purpose of this request is to increase funding for the previous term (03/23/2017 – 03/22/2018) and exercise the renewal option for the next term (03/23/2018 – 03/22/2019).

1. The City of Hollywood Procurement Ordinance Section 38.47(C)(2)(A) (Change Orders) requires a change order if the contract exceeds 10% of the original contract amount. The original agreement was approved for \$42,000.00 and the total expenditure was \$48,500.00, resulting in an overage of 15.5%.
2. The request to exercise the renewal option from 03/23/2018 – 03/22/2019, under the same terms, conditions, and pricing as outlined in the existing agreement, for an estimated annual expenditure not to exceed \$45,000.00.

RECOMMENDATION:

City Manager approval to retroactively increase the approved expenditure for the term of 03/23/2017 – 03/03/22/2018 to \$48,500.00 and to exercise the renewal option for the 03/23/2018 – 03/22/2019 term for an estimated annual amount not to exceed \$45,000.00.

Approval:

[Signature]

Dr. Wazir Ishmael, Ph.D., City Manager

Date: *4/12/18*

Attachments: Professional Services Agreement for Actuary Services
E-mail Dated 04/10/2018, Subject: Actuary Agreement

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OFFICE OF C-MSR HLND

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made as of the 23 day of March, 2017, by and between the City of Hollywood, a municipal corporation of the State of Florida (hereinafter the "City"), and The Howard E. Nyhart Company, Inc. Indiana corporation, whose principal office is located at 8415 Allison Pointe Blvd., Indianapolis, IN 46250 (hereinafter referred to as "Nyhart").

WHEREAS, Nyhart provides actuarial consulting services; and

WHEREAS, the City requires actuarial consulting services;

NOW, THEREFORE, in consideration of the mutual promises herein, the City and Nyhart hereby agree as follows:

ARTICLE 1 - SERVICES/PROFESSIONAL AND CITY REPRESENTATIVES

Nyhart's responsibility under this Agreement is to provide actuarial consulting services such as, but not limited to, calculating costs related the City's pension plans, evaluating assumptions, projections and related calculations for the City's pension plans, and supporting the City in related negotiations and mediations.

Nyhart representative shall be David D. Harris

Telephone No. (770) 405-0755

The City's representative shall be George R. Keller, Jr.

Telephone No. (954) 921-3201

ARTICLE 2 - SCHEDULE/TERM

Nyhart shall commence services upon receipt of authorization to proceed and continue services until December 31, 2017, with the option to extend upon agreement of the parties.

ARTICLE 3 - PAYMENTS TO NYHART

- A. The amount to be paid by the City under this Agreement for all services will be based on hourly rates of \$325.00 for senior actuaries, \$275.00 for actuaries and \$225.00 for analysts. It is estimated that of the total number of hours for which Nyhart will bill the City, 30% will be for services rendered by senior actuaries, 40% will be for services rendered by actuaries, and 30% will be for services rendered by analysts. Out-of-pocket expenses will include items such as copying, postage, and express mail but will not include travel time. Any request for reimbursement for

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CITY OF HOLLYWOOD
PROCUREMENT SERVICES
DIVISION

out-of-pocket expenses will require the submission of invoices, bills, receipts, etc. Nyhart shall bill the City on a monthly basis and shall submit invoices to the City Manager's Office, Attention: Assistant City Manager George R. Keller, Jr. This Agreement will not exceed \$42,000 within a given Fiscal Year.

- B. Invoices received by the City from Nyhart pursuant to this Agreement will be reviewed and approved in writing by the City's representative, indicating that services have been rendered in conformity with the Agreement, and then will be sent to the City's Financial Services Department for payment. All invoices shall contain a detailed breakdown of the total number of hours worked, dates, times and a brief summary of the work performed. In the event there is a question or dispute as to a certain invoice, the City shall notify Nyhart immediately to resolve the matter. Invoices shall be paid within thirty (30) days following the City representative's approval.
- C. In order for both parties herein to close their books and records, Nyhart shall clearly state "final invoice" on Nyhart's final/last billing to the City. This final invoice shall also certify that all services provided by Nyhart have been properly performed and all charges and costs have been invoiced to the City. Because this account will thereupon be closed, any other charges not properly included on this final invoice are waived by Nyhart.

ARTICLE 4 - TERMINATION

This Agreement may be terminated, in whole or in part, by either party, with or without cause, immediately upon written notice from the terminating party to the other party. Unless Nyhart is in breach of this Agreement, Nyhart will be paid for services rendered to the City's satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the City, Nyhart shall:

- A. Stop work on the date and to the extent specified,
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work,
- C. Transfer all work documents in process, completed work, and other materials related to the terminated work to the City, and
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 5 - PERSONNEL

Nyhart is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of the City. All persons engaged in any of the work or services performed pursuant to this Agreement will at all times, and in all places, be subject to Nyhart's sole direction,

supervision, and control. Nyhart shall exercise control over the means and manner in which it and its employees perform the work, and in all respects Nyhart's relationship and the relationship of its employees to the City shall be that of independent contractors and not that of employees or agents of the City. This Agreement does not create a partnership or joint venture between the parties.

Nyhart represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City, nor shall such personnel be entitled to any benefits of the City including, but not limited to, pension, health and workers' compensation benefits.

All of the services required hereunder shall be performed by Nyhart or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in Nyhart's key personnel, as may be listed in Article 1, must be made known to the City's representative and written approval must be granted by the City's representative before said change or substitution can become effective.

Nyhart warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 6 - SUBCONTRACTING

Nyhart shall not subcontract any services or work to be provided to the City without the prior written approval of the City's representative. The City reserves the right to accept or reject the use of a particular subcontractor and to inspect all facilities of any subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this Agreement. The City's acceptance of a subcontractor shall not be unreasonably withheld. Nyhart is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

ARTICLE 7 - FEDERAL AND STATE TAX

The City is exempt from payment of Florida state sales and use taxes. The City will sign an exemption certificate submitted by Nyhart. Nyhart shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City, nor is Nyhart authorized to use the City's tax exemption number in securing such materials.

Nyhart shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement.

ARTICLE 8 - AVAILABILITY OF FUNDS

The City's performance and obligation to pay under this Agreement is contingent upon an annual appropriation for its purpose by the City Commission. The City Commission has appropriated sufficient funds in the FY 2017 Operating Budget for this Agreement.

ARTICLE 9 - INSURANCE REQUIREMENTS

Nyhart shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the City, nor shall Nyhart allow any subcontractor to commence work on its subcontract until all such insurance required of the subcontractor has been obtained and approved.

Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the Risk Manager prior to the commencement of the work. These certificates shall contain a provision that coverage afforded under these policies will not be cancelled, will not expire and will not be materially modified until prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Florida and shall have adequate Policyholders and Financial ratings in the latest ratings of A.M. Best and be part of the Florida Insurance Guarantee Association Act.

Insurance shall be in force until all work required to be performed under the terms of this Agreement is satisfactorily completed as evidenced by the formal acceptance of the City. In the event an insurance certificate provided indicates that the insurance will terminate and lapse during the period of this Agreement, Nyhart shall furnish, prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. Nyhart shall not continue to work pursuant to this Agreement unless all required insurance remains in full force and effect.

REQUIRED INSURANCE

1. General Liability \$300,000, City Listed as "Additional Insured."
2. Professional Liability \$1,000,000 each Claim Agg City listed as certificate holder,
3. Automobile—Commercial policy not needed, proof required that its principals maintain personal automobile liability insurance as required by state law.
4. Workers Compensation—Statutory limits of \$100,000/\$500,000/\$100,000, if the firms employs (4) or more employees. Nyhart shall require any subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by Nyhart. Nyhart and its subcontractors shall maintain, during the

The City reserves the right to require any other insurance coverage it deems necessary depending upon the exposures. Nyhart must show proof that the Insurance Requirements are met before any work can be performed.

ARTICLE 10 - INDEMNIFICATION

Nyhart shall indemnify, defend and hold harmless the City, its officers, agents and employee, from and against any and all liability, suits, actions, damages, costs, losses and expenses, including, but not limited to attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of Nyhart and other persons employed or utilized by Nyhart in the performance of the services under this Agreement. These provisions shall survive the expiration or earlier termination of this Agreement. Such obligation to indemnify and hold harmless shall include all costs, expenses and liabilities incurred by the City in connection with any such claim, suit, action or cause of action, including the investigation thereof and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof. Nyhart acknowledges and agrees that the City would not enter into this Agreement without this indemnification of the City by Nyhart, and that the City's entering into this Agreement shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of this Agreement. Nothing in this Agreement shall be construed to affect, in any way, the City's rights, privileges, and immunities under the doctrine of "sovereign immunity" and as set forth in Florida Statutes §768.28.

ARTICLE 11 - SUCCESSORS AND ASSIGNS

The City and Nyhart each binds itself and its partners, successors, executors, administrators and assigns to the other party to 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 above, neither the City nor Nyhart shall assign, sublet, encumber, convey or transfer its interest in this Agreement without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and Nyhart.

ARTICLE 12 - REMEDIES

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action between the parties arising out of this Agreement will be brought exclusively in Broward County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of

any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 13 - CONFLICT OF INTEREST

Nyhart represents that it has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in the Code of Ethics for Public Officers and Employees (Chapter 112, Part III, Florida Statutes). Nyhart further represents that no person having any such interest shall be employed for said performance.

Nyhart shall promptly notify the City's representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence Nyhart's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that Nyhart may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by Nyhart. The City agrees to notify Nyhart of its opinion by certified mail within five (5) days of receipt of notice from Nyhart. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by Nyhart, the City shall so state in the notice and Nyhart shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by Nyhart under the terms of this Agreement.

ARTICLE 14 - EXCUSABLE DELAYS

Nyhart shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of Nyhart or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; freight embargoes; and abnormally severe and unusual weather conditions.

Upon Nyhart's request, the City shall consider the facts and extent of any failure to perform the work and, if Nyhart's failure to perform was without its or its subcontractors' fault or negligence, the Contract Schedule and/or any other affected provision of this Agreement shall be revised accordingly; subject to the City's rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 15 - DEBT

Nyhart shall not pledge the City's credit or attempt to make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien or any form of indebtedness. Nyhart further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

ARTICLE 16 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

Nyhart shall deliver to the City's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the City under this Agreement.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the City or at its expense will be kept confidential by Nyhart and will not be disclosed to any other party, directly or indirectly, without the City's prior written consent unless disclosure is required by law. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Agreement for or at the City's expense shall be and remain the City's property and may be reproduced and reused at the discretion of the City.

The City and Nyhart shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

ARTICLE 17 - ACCESS AND AUDITS

Nyhart shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Agreement or until completion of any audit, whichever is later. The City shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at Nyhart's place of business.

ARTICLE 18 - NONDISCRIMINATION

Nyhart warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

ARTICLE 19 - INTERPRETATION

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied to either party hereto. The headings are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular, the plural, and vice versa, unless the context otherwise requires.

ARTICLE 20 - AUTHORITY TO PRACTICE

Nyhart hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the City's representative upon request.

ARTICLE 21 - SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 22 - ENTIRETY OF CONTRACTUAL AGREEMENT

The City and Nyhart agree that this Agreement, together with the Exhibits hereto, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 23 - Modification of Work. In the event of any conflict or inconsistency between this Agreement and the provisions in the incorporated Exhibits, the terms of this Agreement shall supersede and prevail over the terms in the Exhibits.

ARTICLE 23 - MODIFICATION OF SCOPE OF WORK

The City reserves the right to make changes in the scope of work, including alterations, reductions therein or additions thereto. Upon receipt by Nyhart of the City's notification of a contemplated change, Nyhart shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the City of any estimated change in the completion date, and (3) advise the City if the contemplated change will affect Nyhart ability to meet the completion dates or schedules of this Agreement.

If the City so instructs in writing, Nyhart shall suspend work on that portion of the scope of work affected by a contemplated change, pending the City's decision to proceed with the change.

If the City elects to make the change, the City shall initiate an amendment and Nyhart shall not commence work on any such change until such written amendment is signed by Nyhart and the City, and if such amendment is in excess of \$50,000 it must also first be approved by the City Commission and signed by the appropriate City officials.

The City shall not be liable for payment of any additional or modified work which is not authorized in the manner provided for by this Article.

ARTICLE 24 - NOTICE

All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the City shall be mailed to:

Paul A. Bassar
2600 Hollywood Blvd
PO Box 229045
Hollywood, FL 33022-9045

and if sent to Nyhart shall be mailed to:

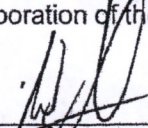
David Harris
The Howard E. Nyhart Company, Incorporated
2000 RiverEdge Parkway, Suite 900
Atlanta, GA 30328

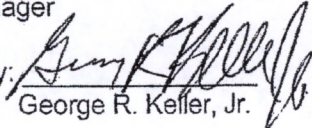
ARTICLE 25 - OWNERSHIP OF DOCUMENTS

All finished or unfinished documents, data, reports, studies, surveys, drawings, maps, models and photographs prepared or provided by Nyhart in connection with this Agreement shall become property of the City, whether the project for which they are made is completed or not, and shall be delivered by Nyhart to the City within ten (10) days of notice of termination. If applicable, the City may withhold any payments then due to Nyhart until Nyhart complies with the provisions of this Article.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals the day and year first above written.

City of Hollywood, a municipal
Corporation of the State of Florida

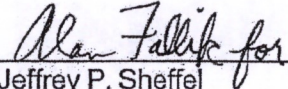
By: 
Wazir A. Ishmael, Ph.D.
City Manager

Approved by: 
George R. Keller, Jr.

Approved as to form & legality for the
use and reliance of the City of Hollywood,

Florida, only.

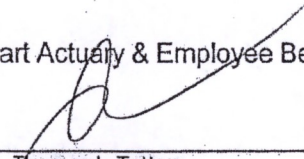
Interim Financial
Services Director



Jeffrey P. Sheffel
City Attorney

:

Nyhart Actuary & Employee Benefits

By: 

Thomas L. Totten
Title: Chief Executive Officer



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/10/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Affinity, LLC P. O. Box 879610 Kansas City, MO 64187-9610	CONTACT NAME: Lockton Affinity, LLC	
	PHONE (A/C, No, Ext): 866-386-2544 FAX (A/C, No): E-MAIL ADDRESS:	
INSURED The Howard E Nyhart Company Incorporated 8415 Allison Pointe Blvd. #300 Indianapolis, IN 46250	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Navigators Specialty Insurance Company	36056
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

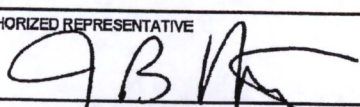
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPOP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$						OCCUR CLAIMS-MADE EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						Y/N N/A PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability Claims Made Policy			CE18MPL014177IC Retro Date: 6/6/1986	04/04/2018	04/04/2019	Each Claim Limit \$5,000,000 Aggregate Limit \$5,000,000 Deductible \$50,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

City of Hollywood 2600 Hollywood Blvd., Suite 419 Hollywood, FL 33022-9045	1299545 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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© 1988-2014 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESSOWNERS LIABILITY SPECIAL BROADENING ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SUMMARY OF COVERAGES	Limits	Page
1. Additional Insured by Contract, Agreement or Permit	Included	1
2. Additional Insured - Broad Form Vendors	Included	2
3. Alienated Premises	Included	3
4. Broad Form Property Damage - Borrowed Equipment, Customers Goods and Use of Elevators	Included	3
5. Incidental Malpractice (Employed Nurses, EMT's and Paramedics)	Included	3
6. Personal and Advertising Injury - Broad Form	Included	4
7. Product Recall Expense	Included	4
Product Recall Expense Each Occurrence Limit	\$25,000 Occurrence	5
Product Recall Expense Aggregate Limit	\$50,000 Aggregate	5
Product Recall Deductible	\$500	5
8. Unintentional Failure to Disclose Hazards	Included	6
9. Unintentional Failure to Notify	Included	6

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

The following changes are made to **SECTION II - LIABILITY:**

1. Additional Insured by Contract, Agreement or Permit

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

Additional Insured by Contract, Agreement or Permit

a. Any person or organization with whom you agreed in a written contract, written agreement or permit to add such person or organization as an additional insured on your policy is an additional insured only with respect to liability for "bodily injury", "property damage", or "personal and advertising injury" caused, in whole or in part, by your acts or omissions, or the acts or omissions of those acting on your behalf, but only with respect to:

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

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

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

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

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

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

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

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

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

- c. This provision does not apply:
- (1) Unless the written contract or written agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal injury and advertising injury".
 - (2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
 - (3) To any lessor of equipment:
 - (a) After the equipment lease expires; or
 - (b) If the "bodily injury", "property damage", "personal and advertising injury" arises out of sole negligence of the lessor.
 - (4) To any:
 - (a) Owners or other interests from whom land has been leased if the "occurrence" takes place or the offense is committed after the lease for the land expires; or
 - (b) Managers or lessors of premises if:
 - (i) The "occurrence" takes place or the offense is committed after you cease to be a tenant in that premises; or
 - (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
 - (5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.
- This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved the rendering of or failure to render any professional services by or for you.

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

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

1. Required by the contract, agreement or permit described in Paragraph a.; or
2. Available under the applicable Limits of Insurance shown in the Declarations.

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

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

2. Additional Insured - Broad Form Vendors

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

Additional Insured - Broad Form Vendors

- a. Any person or organization that is a vendor with whom you agreed in a written contract or written agreement to include as an additional insured under this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.
- b. The insurance afforded to such vendor described above:
 - (1) Only applies to the extent permitted by law;
 - (2) Will not be broader than the insurance which you are required by the contract or agreement to provide for such vendor;
 - (3) Will not be broader than coverage provided to any other insured; and
 - (4) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto

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

The insurance afforded to the vendor does not apply to:

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

- (3) Any physical or chemical change in the product made intentionally by the vendor;
 - (4) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instruction from the manufacturer, and then repackaged in the original container;
 - (5) Any failure to make such inspection, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the sale of the product;
 - (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
 - (7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor;
 - (8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (a) The exceptions contained within the exclusion in subparagraphs (4) or (6) above; or
 - (b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
 - (9) "Bodily injury" or "property damage" arising out of an "occurrence" that took place before you have signed the contract or agreement with the vendor.
 - (10) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
 - (11) Any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
- d. With respect to the insurance afforded to these vendors, the following is added to **SECTION II - LIABILITY, D. Liability and Medical Expense Limits of Insurance:**

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

1. Required by the contract or agreement described in Paragraph a.; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

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

3. Alienated Premises

SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage k. Damage to Property, paragraph (2) is replaced by the following:

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

4. Broad Form Property Damage - Borrowed Equipment, Customers Goods, Use of Elevators

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

Paragraph (4) does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations.

Paragraph (3), (4) and (6) do not apply to "property damage" to "customers goods" while on your premises nor to the use of elevators.

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

1. "Customers goods" means property of your customer on your premises for the purpose of being:

- a. Worked on; or
- b. Used in your manufacturing process.

c. The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured whether primary, excess, contingent or on any other basis.

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

SECTION II - LIABILITY, C. Who Is An Insured, paragraph 2.a.(1)(d) does not apply to a nurse,

emergency medical technician or paramedic employed by you if you are not engaged in the business or occupation of providing medical, paramedical, surgical, dental, x-ray or nursing services.

6. Personal Injury - Broad Form

a. **SECTION II - LIABILITY, B. Exclusions, 2. Additional Exclusions Applicable only to "Personal and Advertising Injury"**, paragraph e. is deleted.

b. **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions, 14. "Personal and advertising injury"**, paragraph b. is replaced by the following:

b. Malicious prosecution or abuse of process.

c. The following is added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions, Definition 14. "Personal and advertising injury"**:

"Discrimination" (unless insurance thereof is prohibited by law) that results in injury to the feelings or reputation of a natural person, but only if such "discrimination" is:

(1) Not done intentionally by or at the direction of:

(a) The insured;

(b) Any officer of the corporation, director, stockholder, partner or member of the insured; and

(2) Not directly or indirectly related to an "employee", not to the employment, prospective employment or termination of any person or persons by an insured.

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

1. "Discrimination" means the unlawful treatment of individuals based upon race, color, ethnic origin, gender, religion, age, or sexual preference. "Discrimination" does not include the unlawful treatment of individuals based upon developmental, physical, cognitive, mental, sensory or emotional impairment or any combination of these.

e. This coverage does not apply if liability coverage for "personal and advertising injury" is excluded either by the provisions of the Coverage Form or any endorsement thereto.

7. Product Recall Expense

a. **SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage,**

o. Recall of Products, Work or Impaired Property is replaced by the following:

o. Recall of Products, Work or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

If such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it, but this exclusion does not apply to "product recall expenses" that you incur for the "covered recall" of "your product".

However, the exception to the exclusion does not apply to "product recall expenses" resulting from:

(4) Failure of any products to accomplish their intended purpose;

(5) Breach of warranties of fitness, quality, durability or performance;

(6) Loss of customer approval, or any cost incurred to regain customer approval;

(7) Redistribution or replacement of "your product" which has been recalled by like products or substitutes;

(8) Caprice or whim of the insured;

(9) A condition likely to cause loss of which any insured knew or had reason to know at the inception of this insurance;

(10) Asbestos, including loss, damage or clean up resulting from asbestos or asbestos containing materials; or

(11) Recall of "your products" that have no known or suspected defect solely because a known or suspected defect in another of "your products" has been found.

b. The following is added to **SECTION II - LIABILITY, C. Who Is An Insured, paragraph 3.b.:**

"Product recall expense" arising out of any withdrawal or recall that occurred before you acquired or formed the organization.

- c. The following is added to **SECTION II - LIABILITY, D. Liability and Medical Expenses Limits of Insurance:**

Product Recall Expense Limits of Insurance

- a. The Limits of Insurance shown in the SUMMARY OF COVERAGES of this endorsement and the rules stated below fix the most that we will pay under this Product Recall Expense Coverage regardless of the number of:
- (1) Insureds;
 - (2) "Covered Recalls" initiated; or
 - (3) Number of "your products" withdrawn.
- b. The Product Recall Expense Aggregate Limit is the most that we will reimburse you for the sum of all "product recall expenses" incurred for all "covered recalls" initiated during the policy period.
- c. The Product Recall Each Occurrence Limit is the most we will pay in connection with any one defect or deficiency.
- d. All "product recall expenses" in connection with substantially the same general harmful condition will be deemed to arise out of the same defect or deficiency and considered one "occurrence".
- e. Any amount reimbursed for "product recall expenses" in connection with any one "occurrence" will reduce the amount of the Product Recall Expense Aggregate Limit available for reimbursement of "product recall expenses" in connection with any other defect or deficiency.
- f. If the Product Recall Expense Aggregate Limit has been reduced by reimbursement of "product recall expenses" to an amount that is less than the Product Recall Expense Each Occurrence Limit, the remaining Aggregate Limit is the most that will be available for reimbursement of "product recall expenses" in connection with any other defect or deficiency.
- g. **Product Recall Deductible**
We will only pay for the amount of "product recall expenses" which are in excess of the \$500 Product Recall Deductible. The Product Recall Deductible applies separately to each "covered recall". The limits of insurance will not be reduced by the amount of this deductible.

We may, or will if required by law, pay all or any part of any deductible amount, if applicable. Upon notice of our payment

of a deductible amount, you shall promptly reimburse us for the part of the deductible amount we paid.

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

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

You must see to it that the following are done in the event of an actual or anticipated "covered recall" that may result in "product recall expense":

- (1) Give us prompt notice of any discovery or notification that "your product" must be withdrawn or recalled. Include a description of "your product" and the reason for the withdrawal or recall;
 - (2) Cease any further release, shipment, consignment or any other method of distribution of like or similar products until it has been determined that all such products are free from defects that could be a cause of loss under this insurance.
- e. For the purpose of this endorsement, the following definitions are added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions:**
1. "Covered recall" means a recall made necessary because you or a government body has determined that a known or suspected defect, deficiency, inadequacy, or dangerous condition in "your product" has resulted or will result in "bodily injury" or "property damage".
 2. "Product recall expense(s)" means:
 - a. Necessary and reasonable expenses for:
 - (1) Communications, including radio or television announcements or printed advertisements including stationary, envelopes and postage;

- (2) Shipping the recalled products from any purchaser, distributor or user to the place or places designated by you;
 - (3) Remuneration paid to your regular "employees" for necessary overtime;
 - (4) Hiring additional persons, other than your regular "employees";
 - (5) Expenses incurred by "employees" including transportation and accommodations;
 - (6) Expenses to rent additional warehouse or storage space;
 - (7) Disposal of "your product", but only to the extent that specific methods of destruction other than those employed for trash discarding or disposal are required to avoid "bodily injury" or "property damage" as a result of such disposal,
you incur exclusively for the purpose of recalling "your product"; and
- b. Your lost profit resulting from such "covered recall".
- f. This Product Recall Expense Coverage does not apply:
- (1) If the "products - completed operations hazard" is excluded from coverage under this Coverage Part including any endorsement thereto; or
 - (2) To "product recall expense" arising out of any of "your products" that are otherwise excluded from coverage under this Coverage Part including endorsements thereto.
8. **Unintentional Failure to Disclose Hazards**
The following is added to **SECTION II - LIABILITY, E. Liability and Medical Expenses General Conditions:**
Representations
We will not disclaim coverage under this Coverage Part if you fail to disclose all hazards existing as of the inception date of the policy provided such failure is not intentional.
9. **Unintentional Failure to Notify**
The following is added to **SECTION II - LIABILITY, E. Liability and Medical Expenses General Conditions, 2. Duties in the Event of Occurrence, Offense, Claim or Suit:**
Your rights afforded under this Coverage Part shall not be prejudiced if you fail to give us notice of an "occurrence", offense, claim or "suit", solely due to your reasonable and documented belief that the "bodily injury", "property damage" or "personal and advertising injury" is not covered under this Policy.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.