

CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES

This Agreement is made as of the _____ day of _____, 20____, 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., an Indiana corporation, whose principal office is located at 8415 Allison Pointe Blvd., Suite 300, Indianapolis, IN 46250, and whose Federal I.D. number is 35-0966414 (hereinafter the "Consultant").

WHEREAS, the Consultant specializes in consulting services in the area of actuarial services; and

WHEREAS, the City requires the expertise of the Consultant for actuarial services; and

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

ARTICLE 1 - SERVICES/CONSULTANT AND CITY REPRESENTATIVES

The Consultant's responsibility under this Agreement is to provide professional/consultation services as described in Exhibit "A" attached hereto and incorporated herein by reference.

The Consultant's Representative shall be Tayt Odom.

Telephone No.: 317-845-3571

The City's Representative shall be _____

Telephone No. _____

ARTICLE 2 – SCHEDULE/TERM

The Consultant shall commence services upon receipt of the executed Agreement and complete all services by May 1, 2019. Any additional work that may be needed will be completed based on an agreed upon schedule.

ARTICLE 3 - PAYMENTS TO CONSULTANT

- A. The total amount to be paid by the City under this Agreement for all services, materials, out-of-pocket expenses and also including any approved subcontracts shall not exceed a total contract amount of \$45,000. For purposes of this Agreement, out-of-pocket expenses are for such items as travel, copying, postage, and express mail. The Consultant shall notify the City's Representative in writing when 80% of the "not to exceed amount" has been reached. The Consultant will bill

the City on a monthly basis, or as otherwise provided, at the amounts set forth in Exhibit "A" for services rendered toward the completion of the Scope of Work. All invoices submitted to the City must be itemized to indicate the number of hours incurred by each category of personnel. Where incremental billings for partially completed items is permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date. It is acknowledged and agreed to by the Consultant that the dollar limitation set forth in this section is a limitation upon, and describes the maximum extent of, the City's obligation to pay the Consultant but does not include a limitation upon the Consultant's duty to perform all services set forth in Exhibit "A" for the total compensation in the amount or less than the guaranteed maximum stated above.

- B. Invoices received by the City from the Consultant 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 this Agreement, and then will be sent to the City's Financial Services Department for payment. All invoices shall contain a detailed breakdown of the services provided for which payment is being requested. Invoices shall be paid within thirty (30) days following the City Representative's approval, provided however, that the City will retain ten (10) percent of each monthly payment as security for final contract completion. In addition to detailed invoices, upon request of the City's Representative, the Consultant will provide City with detailed periodic status reports on the project.
- C. Final Invoice: In order for both parties herein to close their books and records, the Consultant will clearly state "final invoice" on the Consultant's final/last billing to the City. This final invoice shall also certify that all services provided by the Consultant have been properly performed and all charges and costs have been invoiced to the City. Because this account will thereupon be closed, any and other further charges not properly included on this final invoice are waived by the Consultant.

ARTICLE 4 - TERMINATION

This Agreement may be cancelled by the Consultant upon thirty (30) days' prior written notice to the City's Representative in the event of substantial failure by the City to perform in accordance with the terms of this Agreement through no fault of the Consultant. It may also be terminated, in whole or in part, by the City, with or without cause, immediately upon written notice from the City's Representative to the Consultant. Unless the Consultant is in breach of this Agreement, the Consultant shall be paid for services rendered to the City's satisfaction through the date of termination. Termination for cause by the City shall include, but not be limited to, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of the City as set forth herein, or multiple breach of the provisions of this Agreement notwithstanding whether any such breach was previously waived or cured. After receipt of a Termination Notice and except as otherwise directed by the City the Consultant 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.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 5 - PERSONNEL

The Consultant 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 shall at all times, and in all places, be subject to the Consultant's sole direction, supervision, and control. The Consultant shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Consultant's relationship and the relationship of its employees to the City shall be that of an independent contractor and not as employees or agents of the City. This Agreement does not create a partnership or joint venture between the parties.

The Consultant 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 the Consultant 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 the Consultant'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.

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

ARTICLE 6 - SUBCONTRACTING

The Consultant 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 the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors 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. The Consultant 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 the Consultant. The Consultant shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City, nor is the Consultant authorized to use the City's Tax Exemption Number in securing such materials.

The Consultant 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 ____ Operating Budget for this Agreement.

ARTICLE 9 - INSURANCE REQUIREMENTS

The Consultant 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 the Consultant allow any subcontractor to commence work on its subcontract until all similar 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 at least thirty (30) days' 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 by the City. In the event the Insurance Certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the Consultant shall furnish, at least thirty (30) days 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 this

Agreement and extension thereunder is in effect. The Consultant shall not continue to work pursuant to this Agreement unless all required insurance remains in full force and effect.

REQUIRED INSURANCE

1. Commercial General Liability

Commercial General Liability Insurance to cover liability for bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and contractual. Coverage must be written on an occurrence basis, with no less than the following limits of liability:

A. Single Limit Bodily Injury & Property Damage

1. General Aggregate	\$1,000,000
2. Products-Comp/Op Aggregate	\$ 500,000
3. Personal and Advertising Injury	\$ 500,000
4. Each Occurrence	\$ 500,000
5. Fire Damage	\$ 50,000

2. Professional Liability

Professional Liability with limits not less than \$500,000 per Occurrence/\$1,000,000 Aggregate. If coverage is provided on a claims made basis then coverage must be continued for the duration of this Agreement and for not less than one (1) year thereafter, or in lieu of continuation, provide an "extended reporting clause" for one (1) year.

The Consultant shall notify the City's Risk Manager in writing within thirty (30) days of any claims filed or made against the Professional Liability Insurance Policy.

.3. Workers' Compensation Insurance

Workers' Compensation Insurance shall be maintained during the life of this Agreement to comply with statutory limits for all employees, and in the case any work is sublet, the Consultant 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 the Consultant. The Consultant and its subcontractors shall maintain during the life of this Agreement Employer's Liability Insurance. The following must be maintained.

A. Workers' Compensation	\$100,000
B. Employer's Liability	\$500,000

The City reserves the right to require any other insurance coverage it deems necessary depending upon the exposures.

ARTICLE 10 - INDEMNIFICATION

The Consultant shall indemnify, defend and hold harmless the City, its officials, appointed 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 the Consultant and other persons employed or utilized by the Consultant in the performance of the services under this Agreement and any Project 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. 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 the Consultant 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 above, neither the City nor the Consultant 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, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and the Consultant.

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 in Broward County. 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

The Consultant 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). The Consultant further represents that no person having any interest shall be employed for said performance.

The Consultant 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 the Consultant'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 the Consultant 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 the Consultant. The City agrees to notify the Consultant of its opinion by certified mail within thirty (30) days of receipt of notice by the Consultant. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Consultant, the City shall so state in the notice and the Consultant 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 the Consultant under the terms of this Agreement.

ARTICLE 14 - EXCUSABLE DELAYS

The Consultant 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 the Consultant 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 the Consultant's request, the City shall consider the facts and extent of any failure to perform the work and, if the Consultant's failure to perform was without it 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

The Consultant 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. The Consultant 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

The Consultant 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 the Consultant and will not be disclosed to any other party, directly or indirectly, without the City's prior written consent unless required by a lawful order. 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 the Consultant 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

The Consultant 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 the Consultant's place of business.

ARTICLE 18 - NONDISCRIMINATION

The Consultant 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

The Consultant 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 the Consultant 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 25 - 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 the Consultant of the City's notification of a contemplated change, the Consultant 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 shall affect the Consultant's ability to meet the completion dates or schedules of this Agreement.

If the City so instructs in writing, the Consultant 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 a contract amendment and the Consultant shall not commence work on any such change until such written amendment is signed by the Consultant and the City, and if such amendment is in excess of \$25,000 it must also first be approved by the City Commission and signed by the appropriate City official authorized by the City Commission.

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:

2600 Hollywood Blvd., Rm. ____
Hollywood, FL. 33020

and if sent to the Consultant shall be mailed to:

Tayt Odom
The Howard E. Nyhart Company, Inc.
8415 Allison Pointe Blvd., Suite 300
Indianapolis, IN 46250

ARTICLE 25 – OWNERSHIP OF DOCUMENTS

All finished or unfinished documents, data, reports, studies, surveys, drawings, maps, models and photographs prepared or provided by the Consultant 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 the Consultant to the City within ten (10) days of notice of termination. If applicable, the City may withhold any payments then due to the Consultant until the Consultant complies with the provisions of this article.

Contract for Professional/Consulting Services with _____

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

ATTEST:

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

Patricia A. Cerny, MMC
City Clerk

By: _____

City Manager

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

Approved by: _____

Director of Financial
Services

Jeffrey P. Sheffel
City Attorney

AS TO CONSULTANT

:

Title:_____

Exhibit "A"

Scope of Services

For the City of Hollywood Employees' Retirement Fund:

- Perform 30 year cost projections based on various scenarios including the following:
 - Current plan as it stands as of March 1, 2019
 - Plan if pension restoration were to occur and benefits were restored to pre-financial urgency levels
 - A DC plan is implemented for all new hires beginning as of 10/1/2019. Current employees would remain in the plan as it is on March 1, 2019
 - A hybrid plan is implemented that allows all new hires on or after 10/1/2019 to choose between a DC plan and the current DB plan. We will show sensitivities to the employee elections. Current employees would remain in the DB plan as it is on March 1, 2019.
 - A DB plan with reduced employee contributions and reduced benefit levels. This will apply for both new and current employees on a go forward basis. Accrued benefits for current employees will not be changed.
- Provide sensitivity analysis for the above scenarios if asset performance is different than the base assumed rate
- Deliver a report by May 1, 2019 that details the structure and expected cost of the scenarios mentioned above. Any additional work that may be needed will be completed based on an agreed upon schedule.