

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

_____ Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
_____ Recommendations of Boards, Commissions & Committees (Green)
 X Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott Niehaus, Village Manager

DATE: July 5, 2021 (COW)(B of T) July 15, 2021

TITLE: Motion to waive bids and authorize a three (3) year extension for the Lombard Police and Firefighter Pension Funds actuary services contract with The Howard E. Nyhart Company, Inc. ("Nyhart") for 2022 through 2024 in the amount of \$29,700.

SUBMITTED BY: Timothy Sexton, Director of Finance

BACKGROUND/POLICY IMPLICATIONS:

On November 15, 2018 the Village Board approved the proposal from The Howard E Nyhart Company, Inc. for actuary services for 2019 thru 2021. The original proposal included an option for an additional three years (2022 thru 2024) in the amount of \$29,700. Nyhart has provided excellent and timely services over the past three years. Attached is the original administrative services agreement that provides for an optional three years of services with an increase of 3% or \$150 per pension fund per year.

Staff recommends that the Village Board authorize a three (3) year extension for the Lombard Police and Firefighter Pension Funds actuary services contract with The Howard E. Nyhart Company, Inc. ("Nyhart") for 2022 through 2024.

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X Timothy Sexton _____ Date 7/7/21
Village Manager X _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



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

Agreement Between Nyhart and Village of Lombard:

Plan Sponsor Name:	Village of Lombard
Plan Sponsor Address:	255 E Wilosn Ave. Lombard, IL 60148
Plan Sponsor Phone:	(630) 620-5910
Plan Sponsor Fax:	
Plan Sponsor Tax ID Number:	
Plan Sponsor Fiscal Year End:	
Plan Name:	Village of Lombard Police & Firefighters' Pension Plans

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 for the Plans:

Scope of Services

- Commitment to meet your timing needs
- A certified actuarial statement
- A summary of the valuation objectives
- A review of costs and funded position under alternative assumptions as appropriate, including those alternatives to the statutory minimum funding policy
- A statement of the actuarial cost method selected and recommended actuarial assumptions
- GASB statement disclosure information for Comprehensive Annual Financial Report
- Any additional requirements needed per GASB Statements #67 & #68
- Participant benefit statements
- Both an electronic (PDF) copy and the requested number of hard copies submitted by or preceding the deadline.
- Management summary report that will highlight key results from the valuation and important trends and/or market changes that may impact future valuations



- Attendance at annual meeting (including travel)
- Consulting on phone calls and questions regarding valuation, accounting, audit and other recurring issues are included in our basic annual fee. Clients do not need to be concerned that they are on the clock.
- 30-year projected funded ratios, benefit payouts, and contribution requirements using our Pension Financial Manager modeling tool
- Development of a funding policy for the village using our Pension Financial Manager modeling tool

Fees for Services Provided by Nyhart

Pension Services:

Police Pension Fund:	\$4,500 first year
	\$4,500 second year
	\$4,650 third year
	\$4,800 fourth year*
	\$4,950 fifth year*
	\$5,100 sixth year*
Firefighters Pension Fund:	\$4,500 first year
	\$4,500 second year
	\$4,650 third year
	\$4,800 fourth year*
	\$4,950 fifth year*
	\$5,100 sixth year*

*at option of Plan Sponsor

Any additional work completed by Nyhart due to incorrect data or information or due to revisions/requests that are not in the normal course of providing the services outlined in this Agreement will be billed at hourly rates and are in addition to the fees stated above.

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

The Plan Sponsor has general responsibilities with respect to the Plan, 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 Sponsor 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 Sponsor 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 Sponsor 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 Sponsor 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 Sponsor 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 twenty-four (24) 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.

Plan Sponsor shall indemnify Nyhart from and against any and all claim, loss, liability or damage (including attorney's fees) which Nyhart may incur by reason of its good faith administration of the Plan in its role as a non-fiduciary service



provider including, but not limited to, a claim, loss, liability or damage arising by reason of Nyhart's verification of transactions or refusal to honor any direction received under the Plan, whether said verification, payment or refusal is correct or incorrect, if said verification, payment or refusal is based on Nyhart's good faith interpretation and administration of the Plan.

Nyhart shall indemnify the Plan and/or Plan Sponsor from and against any and all claim, loss, liability or damage (including attorney's fees) which the Plan and/or Plan Sponsor 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.

Termination

This Agreement may be terminated for any reason upon 90 days written notice from either party to the other. Termination will not affect Plan Sponsor's obligation to pay fees due.

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: Keith Giagnorio

Date: November 15, 2018

Nyhart

By:

Printed Name: Michael Zorba

Date: 11/27/2018