

BIGBELLY SERVICE AGREEMENT

Agreement No.

CUSTOMER	Full Legal Name: City of Miami Beach		Legal Contact: GISELA TORRES
	Billing Address: 1700 Convention Center Drive Miami Beach, FL 33139 US		Billing Contact: ALBERTO ZAMORA / JAY FINK
			Billing Phone: (305) 673-7080
			Billing Email: JAYFINK@MIAMI-FL.GOV
	Sales Tax Status: <input checked="" type="checkbox"/> Exempt (Attach Certificate) <input type="checkbox"/> Non-Exempt		TIN or FEIN: 59-6000372
	Insurance: <input checked="" type="checkbox"/> Self Insured <input type="checkbox"/> Insurance Certificate Attached		
Shipping Address: 140 MAC ARTHUR CAUSEWAY MIAMI BEACH, FL 33139		Shipping Contact: ALBERTO ZAMORA / JAY FINK	
		Shipping Phone: (305) - 673-7616	
		Shipping Email: JAYFINK@MIAMI-FL.GOV	

Services Schedule	Term	Monthly Service Fee	Monthly System Rate
<p>24 Existing Bigbelly + Smartbelly Double Station – Rear Panel Standard Energy with side message panels and added Ash trays (“Existing Stations”)</p> <p>Faceplate 1: Black hopper; Faceplate 2: Single Stream</p> <p>4 New Bigbelly + Smartbelly Double Station – Message Panels and Ash trays Energy with side message panels</p> <p>38 New Bigbelly Single Station – Message Panels and Ash trays. Energy with side message panels (collectively, (“New Stations”)</p> <p>The Existing Stations and New Stations shall be collectively referred to as “Stations”.</p> <p>(Note: advertising anywhere on the Station (including message panels) shall be prohibited; only the Bigbelly logo may be displayed on the Station)</p> <p>Program includes the following services for each Station:</p> <ul style="list-style-type: none"> CLEAN Console and CLEAN Mobile Software Licenses (collectively, CLEAN Software”) Warranty (parts and labor – including system battery) Shipping, Installation and Set-up CLEAN Software and Station Hardware Training <p>The Station(s) and CLEAN Software for use at each Station shall be collectively referred to herein as the “Equipment”. The Equipment and other services being provided to the City by Bigbelly under this Agreement, including warranty and training, shall be collectively referred to herein as the “System”.</p>	36 Months	\$158.74	\$3,809.76
	36 Months	\$187.82	\$ 751.28
	36 Months	\$133.82	\$5,085.16
Equipment Insurance Fee: Total Annual Cost (Paid in advance annually)			\$3,500.00*
<p>*Insurance is provided for all stations as a fleet, not per individual station. Customer is responsible for paying the applicable Deductible (as defined in subsection 4.3(A)), which shall apply on a per incident basis. The cost of the policy and any Deductible thereunder shall be subject to annual adjustment on the policy anniversary date (Nov 1st).</p> <p>This amount shall become due upon execution of this Agreement and be prorated for the first year of coverage (date of execution until 10/31/2017).</p>			
Shipping Fee: One Time Fee (applicable to New Stations only)			\$ 7,904.00
Relocation Fee: One Time [Not to Exceed] Fee (to move 18 of the 24 Existing Stations including de-install, relocation, re-install)			\$10,897.00
Total Monthly Service Fee (Paid in advance monthly)			\$ 9,646.20

This Service Agreement (the "Agreement"), made and entered into as of 10/30/2017 (the "Effective Date"), by and between the customer identified above ("Customer" or the "City") and Big Belly Solar, Inc. ("Bigbelly", "Vendor") a Delaware corporation located at 150 A Street, Suite 103, Needham, MA 02494, and incorporates herein by reference the Terms and Conditions attached hereto as Attachment A. Vendor and Customer shall each be referred to herein as a "Party." This Agreement may be executed in counterparts, each of which shall be an original, but which together shall constitute one instrument. Intending to be legally bound, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth above. The City Manager's designee for purposes of this Agreement shall be the City's Public Works Department Director.

CITY OF MIAMI BEACH

By: [Signature]
Philip Levine, Mayor

BIG BELLY SOLAR, INC.

By: [Signature]
Printed Name: Jeff Winkley
Title: CFO


ATTEST:

By: [Signature]
Rafael E. Granado, City Clerk

WITNESS:

By: [Signature]
Printed Name: JORDAN KECOVITS
Title: CONTRACTS ADMINISTRATOR

Date: 10/30/17



Date: 10/17/2017

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Signature] 10-2-17
City Attorney [Signature] Date

ATTACHMENT A
BIGBELLY SERVICE TERMS AND CONDITIONS

For purposes of this Attachment A, the "Agreement" shall mean the Bigbelly Service Agreement signed by the parties, including this Attachment A. The meaning of capitalized and undefined terms appearing in these Terms and Conditions shall be as set forth in the Bigbelly Service Agreement unless otherwise indicated herein.

1.0 Term of Agreement

- 1.1 Term. As outlined in the Services Schedule, the Term of this Agreement ("Initial Term") will commence on the Acceptance Date, as defined hereinafter, and will expire three (3) years from the Acceptance Date. The Acceptance Date shall be defined as the date when all of the following has occurred: (1) all of the New Equipment (as defined in subsection 3.1(A)) ordered pursuant to this Agreement has been delivered to the Customer at the receiving location designated by Customer; (2) All of the New Equipment has been installed at the agreed upon Equipment Sites (as defined in subsection 3.1(D)); (3) all of the Relocated Equipment (as defined in subsection 3.1(A)) has been installed at the agreed upon Equipment Sites; and (4) all of the New Equipment and Relocated Equipment have been accepted by Customer in writing, as evidenced by a signed Acceptance Certificate, in the form attached hereto as Attachment B. The parties agree to cooperate so that the Acceptance Date does not exceed three (3) weeks after the date all New Stations are delivered to Customer. The Existing Equipment is the subject of a separate Bigbelly Service Agreement, dated December 4, 2015 (the "Existing Agreement"), which is currently being extended by the parties, on a month to month basis, and which Existing Equipment will be incorporated into this Agreement as of the Acceptance Date. Upon commencement of the Initial Term, this Agreement shall effectively replace and supersede the Existing Agreement, which as of the Acceptance Date will be considered automatically and immediately terminated.
- 1.2 Renewal. Upon expiration of the Initial Term, and upon three (3) months prior written notice, Customer, at the City Manager's sole discretion, shall have the option to renew this Agreement for an additional two (2) years ("Renewal Term"), subject to the pricing set forth in Attachment E. As used herein, "Term" shall mean the Initial Term and the Renewal Term, if exercised. Except to the extent otherwise provided herein, the Term is non-cancelable.

2.0 Fees Payable by Customer

- 2.1 Fees. In compensation for the Bigbelly System described in this Agreement, Customer agrees to pay the Monthly Service Fee, the Equipment Insurance Fee and any other fees (including one time fees) payable for services specified in the Agreement Services Schedule (collectively, "Fees"). Bigbelly shall submit invoices to Customer during the Term of this Agreement per the payment terms outlined in the Agreement Services Schedule. Payments due under this Agreement are subject to the Florida Local Government Prompt Payment Act, Section 218.70 to Section 218.80, Florida Statutes. The Parties agree that each payment due under this Agreement shall be paid within forty-five (45) days from the date on which the applicable invoice is received by Customer. All payments shall be made by check or, at Customer's option, may be automatically deposited to the account of Bigbelly. Late payments shall be subject to interest at the rate of one percent (1%) per month pursuant to the Florida Local Government Prompt Payment Act.
- 2.2 Service Fee Prices. The Monthly Service Fee is guaranteed for the Term of the Agreement.

3.0 Obligations of the Parties

3.1 Bigbelly's Obligations

- (A) Equipment; Software; Ongoing Services. The System which is the subject of this Agreement shall include twenty-four (24) Existing Stations with Clean Software ("Existing Equipment"), of which eighteen (18) will be relocated to a mutually agreed upon site on Washington Avenue between 5th street and 17th Street (the "Relocated Equipment") and 42 New Stations with Clean Software ("New Equipment"). Bigbelly will supply the System identified in the Agreement Services Schedule on a rental basis to Customer for the Term of the Agreement. The New Equipment will be new, not refurbished or used.
- (B) CLEAN Software License. The CLEAN Software License Agreement includes communication services and access to the CLEAN Management Console and CLEAN Mobile. Customer's use of the Software is subject to the then current CLEAN™ Software License Agreement.
- (C) Equipment Delivery. Bigbelly will deliver the New Equipment to a receiving dock or to a location mutually agreed upon by the parties before the shipment. Bigbelly hereby warrants that as of the delivery date of the New Equipment or as of the installation date of the Relocated Equipment, the Equipment shall be:
- (1) good and merchantable, (2) free from defects and malfunctions, (3) free of liens, security interests or other encumbrances, (4) complies with all applicable laws, rules, regulations and orders, and (5) is fit for the purpose for which the Equipment is intended.
- (D) Installation. The New and Relocated Bigbelly waste and recycling Stations will be installed by Bigbelly at mutually agreed upon locations, including semi-permanent attachment to the ground ("Equipment Sites"), which shall be memorialized in writing and attached as Attachment C after installation has occurred.
- (E) Training. Bigbelly shall, at its expense, provide Customer Equipment and Software training, ("Customer Training Plan") to the personnel designated, in writing, by the City Manager or City Manager's designee prior to the Acceptance Date, and as necessary, during the Term of the Agreement. An itemization of the topics which will be covered under the Customer Training Plans are set forth in Attachment D, attached hereto and incorporated herein by reference. The parties shall agree upon the location and method of training.
- (F) Warranty, Defective Part Replacement, Maintenance, and Repair Services. During the Term, (and except for a Casualty Loss (as defined in Section 4.2 below), Bigbelly shall cause the System to be maintained in good repair and operating condition, and cosmetically in accordance with the Maintenance Standards set forth in Attachment G (collectively, "Bigbelly's Maintenance Obligation"); provided, however, that (i) the foregoing shall not limit Customer's obligation to pay insurance Deductibles pursuant to subsection 4.3 (A); and (ii) Customer shall be directly liable to Bigbelly for any damage to or loss of any item of Equipment caused by Customer's error, misuse or abuse. Replacement parts required due to manufacturer defects or workmanship will be provided by Bigbelly at no cost to Customer. Replacement parts provided by Bigbelly may be new, refurbished or certified used. Bigbelly agrees to respond to all such Customer Service requests for maintenance, support, or repair and will dispatch a Field Service Professional (as described in subsection 3.1(G)) according to the following service level agreement ("SLA"), unless delayed by Customer:
- i. Bigbelly will acknowledge any Customer Service request for replacement, maintenance or repair within two (2) business days (the "Acknowledgement Window").

- ii. If there is a remotely curable fault, Bigbelly will maintain or repair within two (2) business days of the Acknowledgement Window
- iii. Bigbelly will complete any maintenance or repairs that require a service provider within ten (10) business days of Acknowledgement Window.
- iv. Bigbelly will replace any Equipment within twenty (20) business days of Acknowledgement Window, unless delayed by Customer.
- v. Credit to the City for Excessive Downtime. Subject to the foregoing, in no event shall the Equipment, on a per unit basis, and/or the Software be separately and independently unavailable for more than 20 calendar days in any given month (the "Downtime Window"). For purposes of this paragraph, "unavailable" means a failure to perform its basic operational function (i.e. signaling of the CLEAN alert labeled "Compacting Problem" or the Software server is offline). Customer acknowledges that this SLA is expressly limited to unavailability resulting from defects, flaws, or malfunctions in the Equipment and/or Software, or other issues deemed to be exclusively within Bigbelly's control, and specifically excludes any unavailability caused by acts of God, nature or other external causes, including but not limited to vehicle strikes and physical abuse. For Equipment and/or Software unavailability that exceeds the Downtime Window and is covered by the SLA, Bigbelly shall extend Customer a prorated daily refund as a credit to account, retroactively, for such extended unavailability in excess of the Downtime Window ("Downtime Credit"), which shall be issued directly as a check from Bigbelly to Customer separate from invoicing and calculated based on the Monthly Service Fee for the Equipment affected. Bigbelly shall submit payment for the Downtime Credit to Customer within thirty (30) days of when notice of Excessive Downtime is received and will provide Customer with supporting documentation for how all amounts have been calculated. Customer acknowledges its payment obligations under this Agreement shall remain unchanged and agrees to pay the full amount of each invoice.

Equipment batteries will be replaced by Bigbelly at no cost to Customer during the Term of the Agreement, except where Station operating conditions change such that insufficient sunlight is available for normal station operations (for example, Customer moves Station into storage and fails to switch off station or places station under awning), and as a result the Equipment battery fails prematurely, battery will be replaced at Customer expense.

- (G) Customer Service. Bigbelly shall provide Technical Customer Support ("Customer Service"), available Monday through Friday, 7 am to 7 pm EST to guide Customer in troubleshooting any minor common operating issues, including Customer Repair Responsibilities, and placing repair service requests. In addition, Bigbelly shall maintain a network of trained Field Service Professionals, in Miami-Dade County, Florida, available for dispatch upon a Customer's request to investigate and resolve issues in the field. If Bigbelly Field Service Professional is dispatched and Bigbelly determines the issue is due to failure of Customer to comply with the Customer's Repair Responsibilities (as defined in subsection 3.2(E)), or to damage as a result of Customer's error, misuse or abuse, Bigbelly reserves the right to bill Customer for the necessary parts, service call and/or repair, as applicable.

(H) Removal. Upon expiration or early termination of the Agreement, Bigbelly shall surrender the Sites **in the same condition as they were prior to the Acceptance Date**. Bigbelly shall, at Customer's expense, in an amount not to exceed \$500 per Station, remove all Stations from the Equipment Sites no later than thirty (30) days after the conclusion of the Term, notwithstanding reasonable delay, (or from the date of other termination of this Agreement) unless a longer time period is agreed to, in writing, by the City Manager). Bigbelly's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of any Equipment Sites for more than sixty (60) days after expiration or termination of the Agreement, without the Customer's consent, shall constitute trespass by Bigbelly, and may be prosecuted as such. Bigbelly shall pay the City One Thousand \$1,000.00 Dollars per day per Equipment Site as liquidated damages for such trespass and holding over.

(I) Subcontractor Services. Bigbelly may contract with third parties to provide Ongoing Services.

(J) Bigbelly Insurance. Bigbelly and/or any of its subcontractors shall maintain and carry in full force during the Term the following insurance:

1. Coverages

- a. Worker's Compensation Insurance as required by Florida, with Statutory limits and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- b. Commercial General Liability Insurance on an occurrence basis, including products and completed operations, contractual liability, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate. *(The general aggregate shall apply separately to this Agreement.)*
- c. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence, for bodily injury and property damage.
- d. Property insurance, including casualty as defined in the policy specimen attached as Attachment H hereto, including the declaration page thereto, containing a waiver of subrogation rights which Bigbelly insurers may have against Customer and against those for whom Customer is in law responsible including, without limitation, its directors, officers, agents, and employees, (without contribution). Such insurance is obtained on the Customer's behalf, subject to the terms of Section 4.3 below, and shall insure the Equipment in an amount not less than the full replacement cost thereof (new). The declaration page shall indicate each site location and schedule of values for each Station and the Deductible and Cap value. The coverage set forth in the specimen policy contained in Attachment H shall be considered sufficient and is hereby approved by the Parties.

2. Additional Insured Status

The City of Miami Beach must be covered as an additional insured with respect to liability arising out of work or operations performed by or on behalf of Bigbelly.

3. Waiver of Subrogation

Bigbelly hereby grants to City of Miami Beach a waiver of any right to subrogation which any insurer of Bigbelly may acquire against the City of Miami Beach by virtue of the payment of any loss under such insurance. Bigbelly agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Miami Beach has received a waiver of subrogation endorsement from the insurer.

4. Other Insurance Provisions

- a. For any property claims made under this Agreement for the replacement of any Equipment, Bigbelly's coverage shall be primary insurance as respects the City of Miami Beach, its officials, officers, employees, and volunteers. Any insurance or self-insurance maintained by the City of Miami Beach shall be in excess of Bigbelly's insurance and shall not contribute with it.
- b. Bigbelly shall notify Customer in writing within two (2) business days of any cancellation of any policy required by this clause.

5. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Miami Beach Risk Management Office.

6. Verification of Coverage

Bigbelly shall provide the required insurance certificates, endorsements or applicable policy language effecting coverage required by this section. All certificates of insurance and endorsements are to be received prior to any work commencing. However, failure to obtain the required coverage prior to the work beginning shall not waive Bigbelly's obligation to provide them. The City of Miami Beach reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7. Special Risks or Circumstances

The City of Miami Beach reserves the right to reasonably request modification of these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. In accordance with the foregoing, Customer agrees to reasonable adjustment of the Equipment Insurance Fee and Deductible as may become necessary.

Certificate Holder

**CITY OF MIAMI BEACH
c/o PROCUREMENT DEPARTMENT
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FL 33139**

Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this Agreement.

- K. Reporting/Monitoring of System. Within thirty (30) days from the end of each month during the Term, Bigbelly will employ best efforts to provide Customer with a report or the capability to generate a report, using reasonable criteria requested by Customer, at Customer's sole discretion, showing the service levels and station performance levels, as well as the recycling levels. Additionally, Customer shall be given access to the Station's CLEAN Software through an Internet Protocol Address (IPA) or dashboard accessibility so that Customer may monitor the effectiveness of the System.

3.2 Customer's Obligations

- (A) Customer agrees that Bigbelly's ability to perform the Services under the Agreement in a timely manner is dependent upon access to Customer's installation information and locations. Deadlines imposed by this Agreement shall be extended in the event that Customer fails to provide such information and/or access in a timely manner.
- (B) Customer agrees to pay for the shipping expense of the New Equipment, in the lump sum of \$7,904.00, and to provide an appropriate facility that can receive inspect and stage all New Bigbelly Equipment until the New Equipment is installed.
- (C) Customer agrees to provide a poured concrete pad if the intended installation surface does not meet Bigbelly specifications. If Customer's installation surface does not meet such specifications, the Customer shall pay, subject to a reasonable estimate, any additional cost associated with Bigbelly's efforts to properly prepare the surface, which will be at Customer's expense. It is the Customer's responsibility to remove at Customer's expense, existing bins or any other items from the locations where Bigbelly stations will be installed. Notwithstanding the foregoing, Customer reserves the right to change the location of an Equipment site, if, in the City Manager's sole discretion, the site preparation cost or other installation factors are not acceptable to Customer.
- (D) Unsafe Condition. Customer agrees to provide immediate notice to Bigbelly with respect to any damage or other event which causes the Equipment to pose a public safety issue or create unsafe operating conditions. City shall remove or otherwise secure from the public space any damaged equipment that poses an immediate threat to the public or operator safety ("Unsafe Condition"). Upon receipt of notification of said Unsafe Condition, Bigbelly will dispatch a Field Service Professional, the cost of which shall be determined in accordance with the provisions set forth herein, to repair any Equipment, or replace any Equipment that Customer has identified as causing an Unsafe Condition, within the SLA set forth in the preceding subsection 3.1(F).
- (E) Automated System Monitoring and Customer Support Escalation. Customer will respond to minor issues they observe or are notified of via automated CLEAN alerts including but not limited to a dirty sensor alert or minor operational issues such as a jammed hopper (collectively "Customer Repair Responsibilities). Customer will use best efforts to promptly resolve these Customer Repair Responsibilities and may contact Customer Service to receive troubleshooting assistance and instructions for proper handling. If Customer's efforts do not resolve these Customer Repair Responsibilities, or the alert relates to a maintenance issue or a repair issue (as described in the preceding subsections 3.1(F) and 3.1(G)), the Customer needs to inform Bigbelly of the action taken and the status of the Station, and Bigbelly will investigate and repair the Station at Bigbelly's expense. Notwithstanding the foregoing, if the issue is found to be due to Customer not taking ordinary precautions to correct any of Customer's Repair Responsibilities or Customer's error, misuse or abuse, then Bigbelly reserves the right to bill customer for reasonable and customary incurred expenses. If Customer cannot resolve a network interruption using the guidelines provided by Bigbelly, Customer will inform Bigbelly and Bigbelly will investigate at Bigbelly's cost.

(F) Customer Insurance. The parties acknowledge that Customer is a Florida municipal corporation and maintains a program of self-insurance as permitted under Florida law. Customer does not carry insurance with an insurance company, so Customer cannot provide Bigbelly with a certificate of insurance. However, in compliance with and subject to limitations of Florida Statutes, Section 768.28 and 440.09, provisions have been made by Customer to process any liability claims that may arise against Customer pursuant to the terms of this Agreement and the same protection will be afforded as would be provided by a policy of insurance. Upon execution of this Agreement, Customer will provide a letter confirming self-insurance coverage for the liability coverage.

(G) Customer reserves the right to change Equipment Sites, at the City Manager's sole discretion and at Customer's sole expense. Within five (5) business days following relocation of any Equipment, Customer shall notify Bigbelly in writing of the specific location of such Equipment.

4. Equipment Rental Terms and Conditions

4.1 Title To and Use of Equipment

(A) Title. As further set forth in Section 5.4 below, Bigbelly is and will at all times be the sole owner of the Equipment. Customer shall not acquire any title or interest, legal or equitable, in the Equipment, other than the use rights set forth in this Agreement. In the event this Agreement is deemed to be disguised sale, Customer hereby grants to Bigbelly a security interest in the Equipment (and all accessions thereto and substitutions therefore) and the proceeds thereof.

(B) Use of Equipment. Customer shall use the Equipment solely for waste collection and recycling operations. Customer shall ensure safe operation of the Equipment by trained personnel. Customer and Bigbelly shall comply with all Bigbelly and governmental guidelines, laws, rules, regulations and ordinances applicable to the use and operation of the Equipment. **The Equipment cannot be used for advertising purposes and may only contain the Bigbelly logo.**

(C) No Pledge. Customer shall not pledge, lend, create a security interest in or permit any lien to attach to the Equipment or any part thereof or attempt in any other manner to dispose the Equipment.

(D) No Attachments. Customer represents and warrants that the Equipment is, and shall at all times remain, fully removable personal property notwithstanding any affixation or attachment to real property or improvements. Customer shall give Bigbelly immediate notice of any such attachment or other judicial process affecting the Equipment and shall immediately take all action necessary to remove such attachment and terminate the effect of such judicial process on the Equipment.

(E) Equipment Inspection Rights. Bigbelly and its agents shall have the right to enter any premises where Equipment is located to inspect such Equipment at any time with reasonable advance written notice to Customer.

4.2 Risk of Loss.

(A) Bigbelly Insures Equipment. From the date that all Equipment has been delivered to Customer at the receiving location until the expiration of the Term, Customer will bear the entire risk of whole or partial loss, destruction or damage to the Equipment caused by any sudden, unexpected or unusual event such as, without limitation, a flood, hurricane, tornado, fire, earthquake, theft or vandalism (a "Casualty Loss"). The definition of a Casualty Loss shall not include normal wear and tear or progressive deterioration, any loss caused by the negligence or willful misconduct of Bigbelly, its employees, contractors or agents, or any defects, flaws or malfunctions in the Equipment. To the extent applicable, for any Casualty Loss that is covered by the Equipment insurance policy acquired by Bigbelly pursuant to subsection 3.1(J)(1)(d), Customer shall be responsible for payment of the Deductible for each claim made thereunder. In the event Customer is self-insuring the Equipment or

if Bigbelly's Equipment insurance policy does not cover such Casualty Loss for any reason, Customer shall be responsible for the entire cost of such Casualty Loss, as further set forth herein. Each Party will give the other Party written notice within 10 days of any Casualty Loss reported to them ('Loss Notice'). Except as provided in this section, no loss will condition, reduce, or relieve Customer's rental obligations, including its obligation to pay any fees pursuant to the Agreement and any Attachments thereto. If as a result of a Casualty Loss, any Equipment is damaged but can be economically repaired, Bigbelly shall immediately have the Equipment restored to good working order and condition at Bigbelly's or Customer's expense, as applicable. If as a result of a Casualty Loss, the Equipment is not economically repairable, or the repair cost of the Equipment exceeds its FMV Amount (as defined herein) ("Total Loss"), Bigbelly shall replace the Equipment within twenty (20) days from receipt of the Loss Notice, and Customer shall, as applicable, pay the applicable Deductible to Bigbelly, subject to the Cap. For purposes of this section, the FMV Amount shall mean the replacement cost of the Equipment, plus the cost of shipping, delivery and installation of the Equipment, which is further set forth in Attachment F.

(B) the Parties agree to cooperate with each other in connection with the investigation of a Casualty Loss.

4.3 Additional Insurance Provisions

(A) Equipment Insurance Fee

Pursuant to the coverage requirements set forth in Section 3.1(J)(1)(d), Customer shall pay the annual Equipment Insurance Fee as described in the Service Schedule. Customer acknowledges that such insurance is calculated and extended for all stations as a fleet and does not otherwise reflect or indicate coverage per individual station. For any and all claims made pursuant to Bigbelly's insurance policy covering the cost of Equipment replacement or repair, Customer shall be responsible for and remit to Bigbelly, upon demand, the applicable deductible per occurrence ("Deductible"), subject to the applicable cap amount, in the aggregate per occurrence (the "Cap"). The annual Equipment Insurance Fee and any applicable Deductible (including the Cap per occurrence) thereunder shall be subject to annual adjustment on the policy anniversary date (Nov 1st), with the annual Equipment Insurance Fee being payable up-front annually. The Equipment Insurance Fee for the first year of the Term shall become due upon execution of this Agreement and be prorated for the first year of coverage (date of execution until 10/31/2017). Thereafter, at least thirty (30) days prior to each policy anniversary date, Bigbelly shall provide Customer with the cost proposal for the new Bigbelly insurance policy, the coverage information, and any additional information which the City Manager may reasonably requested, in order to elect whether or not accept the new policy and Equipment Insurance Fee or elect to secure its own policy or self-insure pursuant to subsection B herein. Upon the expiration or early termination of the Agreement, Bigbelly shall refund to Customer the unearned Equipment Insurance Fee relating to the Equipment insurance policy in place at the time.

(B) Option to Self-Insure

At any time during the Term, Customer shall have the option, exercised in the City Manager's sole discretion, to insure or self-insure through the Customer's self-insurance fund (the "City's Equipment insurance") the Equipment against any Casualty Loss in an amount not less than the replacement cost thereof. In such case, Customer shall provide Bigbelly at least thirty (30) days advance written notice of such election, and thereafter Customer shall maintain the City's Equipment insurance in full force and effect for the remainder of the Term. Upon notice of Customer's intent to assume the responsibility of maintaining City's Equipment insurance, Bigbelly shall cancel the policy described in Section 3.1(J)(1)(d) above, refund Customer any unearned Equipment Insurance

Fee, and thereafter Customer will bear the entire risk of loss for a Casualty Loss, in accordance with Section 4.2 above.

(C) Flood Damage or Uncovered Casualty Loss under Bigbelly's Equipment Insurance Policy.

In the event of a Casualty Loss caused primarily by flood damage, catastrophic or otherwise, that is not covered under Bigbelly's Equipment insurance policy, described in Section 3.1(J)(1)(d), Customer, at the City Manager's sole discretion, shall have the right to either (i) terminate the rental of any affected Station (each a "Damaged Station"), subject to the payment of, in addition to all amounts then due through the date of termination, an early termination fee equal to one hundred percent (100%) of the remaining Monthly Service Fee to become due during the then current Term as calculated based on the number of those Damaged Stations being terminated, without undertaking the repair of any of the Damaged Stations, or (ii) cause Bigbelly to replace the Damaged Station(s), at Customer's expense, subject to the replacement cost set forth in Attachment F. In the event Customer terminates rental of a Damaged Station under this subsection 4.3(C), the Total Monthly Service Fee shall be reduced as calculated based on the number of Damaged Stations. Upon such termination, Bigbelly will remove the Damaged Station and Customer will pay Bigbelly the removal fee per Damaged Station, as set forth in Section 3.1(H). Thereafter, the City shall be fully discharged from any further liabilities or duties with respect to the Damaged Stations.

4.4 Termination for Convenience. The City Manager, at his sole discretion, may terminate the rental of one or more Stations, without cause and for convenience, subject to the payment of, in addition to all amounts then due through the date of termination, a termination fee equal to one hundred percent (100%) of the remaining Monthly Service Fee to become due during the then current Term as calculated based on the number of Terminated Stations. In the event Customer terminates rental of a Terminated Station, the Total Monthly Service Fee shall be reduced as calculated based on the number of Terminated Stations. Bigbelly will remove the Terminated Stations and Customer will pay Bigbelly the removal fee per Terminated Station, as set forth in section 3.1(H). If the Terminated Station has suffered any damage, the Station shall be repaired, as required under the terms of this Agreement, prior to being removed. Thereafter, the City shall be fully discharged from any further liabilities or duties with respect to the Terminated Stations.

5.0 General Terms and Conditions

5.1 Taxes and Other Charges. Customer is responsible for all taxes (including sales, use and personal property tax), fees, and assessments (collectively, "Taxes") that may be imposed by any governmental entity or taxing authority in connection with this Agreement or any amount due hereunder. Customer will reimburse Bigbelly (or pay directly to the applicable taxing authority if instructed in writing by Bigbelly). Notwithstanding the foregoing, Bigbelly acknowledges that Customer is a municipal corporation, organized and existing under the State of Florida, and has been provided with Customer's Certificate of Exemption.

5.2 Ongoing Services. Customer agrees that during the Term of the Agreement, it shall keep in effect the Ongoing Services as defined in the Agreement. Unless otherwise agreed in a written amendment to this Agreement, Bigbelly or its subcontractors shall be the sole and exclusive suppliers of the Ongoing Services.

5.3 Additions and Modifications of Equipment. Unless otherwise expressly agreed by an officer of Bigbelly in writing, Customer shall not make any additions, alterations or modifications to the Equipment. Customer shall not remove, cover or damage any Bigbelly logos or other identification markings on the Equipment.

5.4 Ownership Rights. The Equipment and Software contain intellectual property including but not limited to patented and unpatented inventions, trade secrets, know-how, and copyrights all of which is owned and will continue to be owned exclusively by Bigbelly and/or its licensors and Customer will obtain no rights thereto other than the limited rights of use under this Agreement. Customer acknowledges and agrees that all technology, materials, hardware, software is the sole and exclusive property of Bigbelly (Bigbelly Property). Bigbelly hereby grants Customer a royalty-free, non-exclusive, fully paid up right and license to use the Equipment, the Software, and any intellectual property rights therein as necessary for Customer and its contractors to use the Equipment and Bigbelly Service consistent with the terms and conditions of the Agreement and these Terms and Conditions. Bigbelly reserves the right, at its sole cost and expense and subject to applicable governmental guidelines, laws, rules, regulations and ordinances, at any time upon notice to Customer, to enhance or otherwise modify the Equipment and/or Software made available to Customer under this Agreement, including but not limited to enhancements or modifications for the purpose of implementing Wi-Fi network capability to the Equipment, instituting mechanisms for data collection, processing and analysis. Notwithstanding the foregoing, any content, data or material of which the Equipment and Software is comprised or which is otherwise contained within or attached to, generated, collected or processed by the Equipment and/or CLEAN Software, in connection with the performance of this Agreement, shall remain the sole and exclusive property of Customer ("Customer Property"). Additionally, Bigbelly will cooperate with Customer in connection with any requests for records which Customer may receive pursuant to any Public Records' Laws including, without limitation, Chapter 119, Florida Statutes.

5.4.1 Advertising. The parties acknowledge that no advertising is permitted on any portion of the Bigbelly Equipment. Notwithstanding the foregoing, Customer shall be permitted to display public service messages at no additional cost to Customer, except for any out of pocket cost incurred by Bigbelly for the production of such related advertising materials, which cost shall be reimbursed to Bigbelly.

5.5 Termination

(A) Effect of Termination. Except as provided for in Section 5.7 below, or otherwise specified in this Agreement, any termination of the Agreement by Customer, without cause, shall not relieve Customer of its obligations to make any and all payments which obligations are absolute, unconditional, irrevocable, non-cancelable and subject to no right of set off, counterclaim, deduction, or defense.

(B) Post Termination Duties / Surrender of Equipment. Upon the expiration or earlier termination or cancellation of the Agreement, Bigbelly shall remove the Equipment as described in subsection 3.1 (H) above.

5.6 Indemnifications by the Parties

(A) Indemnity by Bigbelly. Bigbelly shall indemnify, defend, and hold harmless Customer and its directors, officers and employees, agents, and contractors, (collectively, Customer and/or its representatives), as to all actions (whether at law or in equity), claims, liabilities, losses, damages and expenses (including reasonable attorneys' fees and other legal expenses and amounts paid in settlements) brought against Customer and/or its representatives because of (a) any negligent acts, errors, omissions or other wrongful conduct of Bigbelly, its officers, employees, agents, contractors, or any other person or entity acting under Bigbelly's control or supervision (collectively, Bigbelly and/or its representatives), in connection with, related to, or as a result of Bigbelly's performance pursuant to this Agreement or the use of the Bigbelly Equipment; (b) breach or alleged breach by Bigbelly of any of its warranties to, or agreements with, Customer, (c) any claim that any of the products or services infringes any patent, trademark, copyright or other intellectual property right, anywhere in the world, or (d) any death, injury or damage to any person or property caused by Bigbelly's negligent performance of this Agreement. In no event will Bigbelly be liable for or indemnify Customer or its representatives against any damage,

claim or injury arising out of Customer or its representative's gross negligence or intentional misconduct, or any third party's actions, including but not limited to accidental or intentional tampering with the Equipment.

(B) Indemnity by Customer. To the extent allowable, and subject to the limitations on the City's liability, as set forth in Section 768.28, Florida Statutes, Customer shall indemnify and hold Bigbelly and its directors, officers and employees harmless, and defend Bigbelly and its representatives if it requests, as to all claims, liabilities, losses, damages and expenses (including, without limitation, reasonable attorneys' fees and other legal expenses and amounts paid in settlements) brought against Bigbelly and/or its representatives arising out of any grossly negligent act or omission or intentional misconduct of Customer and/or its representatives; however, in no event will Customer be liable for or indemnify Bigbelly or its representatives against any damage, claim or injury arising out of Bigbelly or its representative's negligence or other misconduct, or any third party's actions, including but not limited to accidental or intentional tampering with the Equipment.

(C) Survival of Indemnity. The rights and obligations of Bigbelly under this Section 5.6 survive the termination, cancellation or expiration of this Agreement.

5.7 Default; Dispute Settlement; Governing Law

(A) Definition of Default. The term "Default" means any of the following events: (i) Customer fails to make any payment required under this Agreement and such non-payment is not cured within ten (10) days following written notice; (ii) Customer or Bigbelly fails to perform any other obligation under this Agreement and such non-performance is not cured within thirty (30) days following written notice; (iii) Customer or Bigbelly defaults under any other Agreement between Customer and Bigbelly (iv) Customer or Bigbelly becomes insolvent or makes an assignment for the benefit of its creditors; (v) a receiver, trustee, conservator or liquidator of Customer or Bigbelly of all or a substantial part of such party's assets is appointed with or without the application or consent of such party; (vi) a petition is filed by or against Customer or Bigbelly under any bankruptcy, insolvency or similar law; or (vii) any warranty or representation made by either party herein proves to have been false or misleading when made; or, (viii) there is a material adverse change in Customer's financial condition.

(B) Default by Customer. Upon the occurrence of a Default by Customer, Bigbelly may do one or more of the following as Bigbelly in its sole discretion shall elect: (i) initiate Dispute Settlement procedures pursuant to subsection (D) herein to enforce performance by Customer of the Agreement or to recover damages for the breach thereof; (ii) cause Customer, at Customer's expense (as more particularly set forth in subsection 3.1(H)), to promptly return the Equipment to Bigbelly at such place as Bigbelly designates in writing; (iii) by notice in writing to Customer, cancel or terminate the Agreement, without prejudice to any other remedies hereunder; (iv) enter upon, or instruct its agents or assigns to enter upon, the premises of Customer or other premises where any Equipment may be located and take possession of and remove all or any portion of such Equipment without liability to Customer by reason of such entry or taking possession; (v) subject to the limitations on Customer's liability in Section 5.14 hereof, require Customer to pay to Bigbelly immediately, upon demand, in addition to all amounts then due through the date of termination, liquidated damages in the amount of the greater of (A) eighty percent (80%) of the remaining Service Fees to become due during the Term or (B) one year of Service Fees; however, said liquidated damages not exceeding one hundred percent (100%) of the remaining Service Fees to become due during the Term, which liquidated damage amount, owing to the acknowledged difficulty in establishing a value for the unexpired Initial Term, the parties agree that this represents an agreed upon reasonable measure of damages and is not to be deemed a forfeiture or penalty, (vi) charge Customer interest on all monies due Bigbelly at the rate of one percent (1%) per month from the date of the Default until paid, pursuant to the Florida Local

Government Prompt Payment Act; (vii) collect from Customer all expenses incurred by Bigbelly in connection with the enforcement of any remedies, including all expenses of repossessing, storing, shipping, repairing and selling the Equipment and reasonable attorneys' fees; and (viii) exercise any other right or remedy available to Bigbelly under applicable law.

- (C) Default by Bigbelly. Upon the occurrence of a Bigbelly Default, Customer may do one or more of the following as Customer in its sole discretion shall elect; (i) initiate Dispute Settlement procedures pursuant to subsection (D) herein to enforce performance of the Agreement or recover damages for the breach thereof; (ii) cause Bigbelly, at its expense, to promptly collect the Equipment; (iii) by notice in writing to Bigbelly, cancel or terminate the Agreement, without prejudice to any other remedies hereunder; (iv) subject to the limitations on Bigbelly's liability in Section 5.14 hereof, collect from Bigbelly all expenses incurred by Customer in connection with the enforcement of any remedies, including all expenses of repossessing, storing, shipping, repairing and selling the Equipment and reasonable attorneys' fees; and (v) exercise any other right or remedy available to Customer under applicable law.
- (D) Dispute Settlement. In the event of any dispute arising due to a Default or with respect to the terms of the Agreement or obligations of the parties, the parties agree to discuss the dispute in an attempt to amicably resolve such dispute within 30 days of the date of a written notice of such dispute by one party to the other. Failing any such resolution, either party will be free to seek remedy through a court of competent jurisdiction.
- (E) Continuation of Obligations. The occurrence of a dispute under or relating to the Agreement shall not relieve Bigbelly of, or change in any way, Bigbelly's obligation to provide the Ongoing Services in accordance with the terms of the Agreement nor shall the occurrence of a dispute under or relating to the Agreement relieve Customer of its obligations to make any and all payments described in the Agreement including the Attachments, which obligations are absolute, unconditional, irrevocable, non-cancelable and subject to no right of set off, counterclaim, or deduction, unless otherwise specified in this Agreement.
- (F) Governing Law. The Agreement including the Attachments shall be interpreted under the laws of the courts of the State of Florida, without regard to principles of conflicts of law or the United Nations Convention on the International Sale of Goods. Each party consents to the personal jurisdiction of federal and state courts located in Miami-Dade County, Florida. EACH PARTY HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY LITIGATION ARISING FROM OR RELATED IN ANY WAY TO THIS AGREEMENT OR THE EQUIPMENT.

5.8 Assignment. Customer may not assign this Agreement or any rights hereunder, or sublease or lend any Equipment without the prior written consent of Bigbelly. No assignment or sublease shall relieve Customer of its obligations hereunder and Customer shall remain primarily liable for such obligations. Any sale, assignment, transfer, encumbrance, delegation or sublease by Customer not consented to by Bigbelly shall be void ab initio. Bigbelly may at any time assign to any person (an "Assignee") any interest in this Agreement in part or in whole or grant security interests in the Equipment and/or the Bigbelly's rights hereunder. In such event, all the provisions of this Agreement for the benefit of Bigbelly shall inure to the benefit of and be exercised by or on behalf of such Assignee, but the Assignee shall not be liable for or be required to perform any of Bigbelly's obligations to Customer and Bigbelly shall retain such obligations. Customer acknowledges that Assignee is providing financing for the Equipment only and agrees that (a) as between Customer and Bigbelly, all of Customer's payment obligations shall be absolute, unconditional and not subject to set-off, counterclaim, reduction, recoupment or other defense (b) it will not assert any defenses, set-offs, counterclaims or claims against any Assignee that Customer may have against Bigbelly at any time; and (c) any such assignment shall not materially change Customer's duties or obligations hereunder. Subject to the foregoing, the Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties hereto.

5.9 Relationship of Parties. Bigbelly and Customer are each independent entities and the relationship between Bigbelly and Customer under the Agreement is not a joint venture, partnership, principal-agent, broker, sales representative or franchise relationship. Bigbelly has no authority to make any promise, commitment or agreement on Customer's behalf, and Bigbelly will not represent to anyone that it does have such authority.

5.10 Notices. Each notice provided for in the Agreement shall be given in writing and become effective when:

(A) served by personal delivery to the recipient's Legal Department or Contract Administrator;

Customer: City of Miami Beach

BIGBELLY SOLAR, INC.:

Name: Eric Carpenter

Brian Phillips

Title: Assistant City Manager and Director of

City of Miami Beach

Public Works Department

President/CEO

Address: City of Miami Beach

150 A Street, #103

1700 Convention Center Drive

Needham, MA 02494

With a copy to:

City Manager

City of Miami Beach

1700 Convention Center Drive

Miami Beach, Florida 33139

(B) deposited, postage prepaid in the United States registered or certified mails addressed to the recipient's Legal Department or Contract Administrator;

i. dispatched to the recipient's Legal Department or Contract Administrator via overnight mail using UPS, Federal Express or similar carrier; or,

ii. sent to recipient's Legal Department or Contract Administrator: via facsimile or other electronic means if delivery does not require a signature or other confirmation of delivery.

5.11 Force Majeure. Any delay or failure of either party to perform its obligations (other than payment obligations) shall be excused if it is caused by an extraordinary event or occurrence beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, natural disasters, wars and sabotage. Raw material or labor shortages are not force majeure events. Each party shall promptly notify the other of the reason for the delay and use its best efforts in curing such cause and shall take all action practicable to minimize the adverse impact of the delay on the other party.

5.12 No Warranties. Customer hereby acknowledges that it has not entered into the Agreement including the Attachments in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set forth therein.

5.13 Use of Trade Names and Trademarks. Neither party may use the trade name, service mark, logo or trademark of the other party for any purpose without previous permission in writing from the other party.

5.14 Damages. Unless otherwise provided in the Agreement, in no event shall either party, or their respective affiliates, shareholders, officers, directors, employees, agents, or representatives, or assigns be liable to the other for lost revenue, lost profits, incidental, indirect or consequential damages, resulting from any Services provided in connection with this Agreement. The Customer and Bigbelly's maximum aggregate liability to the other in relation to or in connection with a breach of the terms of this Agreement will be limited to the total amount paid by Customer to Bigbelly under the Agreement.

5.15 Injunctive Relief. If there is a breach or threat of a breach of the terms of the Agreement, the parties agree that compensation alone would not be an adequate remedy for the harm suffered by the non-breaching party, which harm would be immediate and irreparable. Therefore, if there is a breach or threatened breach, then the non-breaching party shall be entitled to seek injunctive relief to stop the breach or threatened breach. The rights and obligations of the parties under this provision survive the termination, cancellation, or expiration of the Agreement.

5.16 Fiscal Funding This Section 5.16 is effective only if Customer is a governmental entity, agency or authority. Customer hereby represents and warrants to Bigbelly that: (a) Customer is a State, possession of the United States, the District of Columbia, or political subdivision thereof as defined in Section 103 of the Internal Revenue Code and Treasury Regulations and Rulings related thereto (the "Code"); (b) If Customer is incorporated, it is duly organized and existing under the Constitution and laws of its jurisdiction of incorporation and will do or cause to be done all things necessary to preserve and keep such organization and existence in full force and effect; (c) Customer has been duly authorized by the Constitution and laws of the applicable jurisdiction and by a resolution of its governing body (which resolution, if requested by Bigbelly, is attached hereto), to execute and deliver the Agreement and to carry out its obligations hereunder; (d) All legal requirements have been met, and procedures have been followed, in order to ensure the enforceability of the Agreement; (e) The Equipment will be used by Customer only for essential governmental or proprietary functions of Customer consistent with the scope of Customer's authority and will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use (f) The Customer shall comply at all times with all applicable requirements of the Code. If sufficient funds are not appropriated to make contracted payments under the Agreement ("Payments"), the Agreement shall terminate and Customer shall not be obligated to make contracted Payments under the Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, Customer shall, no later than the end of the fiscal year for which contracted Payments have been appropriated, deliver possession of the Equipment to Bigbelly. If Customer knowingly and willfully prevents Bigbelly from removing the Equipment, as provided in subsection 3.1(H), then the termination shall nevertheless be effective but Customer shall be responsible for the payment of damages in an amount equal to the per diem portion of contracted Payments thereafter coming due that is attributable to the number of days after the termination during which the Customer fails to allow Bigbelly access to Customer's property for the removal of the Equipment. The per diem amount shall be determined by taking the total monthly payment for the Equipment divided by the number of days in the hold over month) Customer shall notify Bigbelly in writing within seven (7) days after the failure of the Customer to appropriate funds sufficient for the payment of the contracted Payments, but failure to provide such notice shall not operate to extend the Agreement term or result in any liability to Customer.

5.17 Entire Agreement. The Agreement including the Attachments constitute the entire agreement between the parties regarding its subject matter and supersede all prior agreements, oral and written, negotiations, commitments and writings, and may not be released, discharged, abandoned, changed or modified in any manner, orally or otherwise, except by an instrument in writing signed by a duly authorized representative of each party. Any purchase order or other ordering document issued by Customer is for administrative purposes only and does not form part of this Agreement.

5.18 Amendment; Modification; Waiver. No modification, amendment, waiver or release of any provision of the Agreement or any right, obligation, claim or cause of action arising under the Agreement shall be valid or binding unless in writing and duly executed by the party against whom enforcement is sought. No waiver by either party of any breach, or the failure of either party to enforce any of the terms and conditions of the Agreement, shall affect, limit or waive that party's right to enforce and compel compliance with all terms and conditions of the Agreement or to terminate the Agreement as permitted by its terms. Any provision of this Agreement which for any reason may be held unenforceable in any one jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Agreement, and any such unenforceability in any one jurisdiction shall not render such provision unenforceable in any other jurisdiction. This Agreement may be executed in any number of counterparts and by different parties hereto or thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together consist of but one and the same instrument.

5.19 Representations. Customer and Big Belly hereby represent, warrant and covenant that: (a) Each Party is organized and validly existing under the laws of the jurisdiction of its organization, with adequate power and capacity to enter into the Agreement and any other documents, instrument or agreement related to this Agreement; (b) The Agreement has been duly authorized, executed and delivered by each Party and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms, except to the extent that the enforcement of remedies therein provided may be limited under applicable bankruptcy and insolvency laws; (c) no approval, consent or withholding of objections is required from any governmental authority or instrumentality with respect to the entry into or performance by each Party of the Agreement, except such as have already been obtained pursuant to City of Miami Beach Resolution Number 2017-29790; (d) there are no suits or proceedings pending or threatened in court or before any regulatory commission, board or other administrative governmental agency against or affecting either Party, which will have a material adverse effect on the ability of either Party to fulfill its obligations and liabilities under the Agreement.

5.20 Florida Public Records Law.

(A) Bigbelly shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time. Records made or received in connection with this Agreement are public records under Florida law, as defined in Section 119.011(12), Florida Statutes.

(B) Pursuant to Section 119.0701 of the Florida Statutes, if the Contractor meets the definition of "Contractor" as defined in Section 119.0701(1)(a), Bigbelly shall:

- (1) Keep and maintain public records required by the City to perform the service;
- (2) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if Bigbelly does not transfer the records to the City;
- (4) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of Bigbelly or keep and maintain public records required by the City to perform the service. If Bigbelly transfers all public records to the City upon completion of the Agreement, Bigbelly shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Bigbelly keeps and maintains public records upon completion of the Agreement, Bigbelly shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from

the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

(C) REQUEST FOR RECORDS; NONCOMPLIANCE.

(1) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify Bigbelly of the request, and Bigbelly must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

(2) Bigbelly's failure to comply with the City's request for records within a reasonable time, shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.

(3) If Bigbelly fails to provide the public records to the City within the reasonable time stated above it may be subject to penalties under s.119.10.

(D) CIVIL ACTION.

(1) If a civil action is filed against a Bigbelly to compel production of public records relating to the City's contract for services, the court shall assess and award against Bigbelly the reasonable costs of enforcement, including reasonable attorney fees, if:

a. The court determines that Bigbelly unlawfully refused to comply with the public records request within a reasonable time; and

b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that Bigbelly has not complied with the request, to the City and to Bigbelly.

(2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to Bigbelly at Bigbelly's address listed on its contract with the City or to Bigbelly's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(3) If Bigbelly complies with a public records request within 8 business days after the notice is sent it is not liable for the reasonable costs of enforcement.

(E) IF BIGBELLY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO BIGBELLY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CITY OF MIAMI BEACH

ATTENTION: RAFAEL E. GRANADO, CITY CLERK

1700 CONVENTION CENTER DRIVE

MIAMI BEACH, FLORIDA 33139

E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV

PHONE: 305-673-7411

5.21 No Discrimination.

Bigbelly hereby agrees to comply with City of Miami Beach Human Rights Ordinance, as codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, or public services, on the basis of actual or perceived race, color, national origin, religion, sex, intersexuality, sexual orientation,

gender identity, familial and marital status, age, ancestry, height, weight, domestic partner status.
labor organization membership, familial situation, political affiliation, or disability.

End of Attachment A.

ATTACHMENT B

ACCEPTANCE CERTIFICATE

**FOR THE BIGBELLY SERVICE AGREEMENT (AGREEMENT)
WITH THE CITY OF MIAMI BEACH, FLORIDA (CUSTOMER), DATED _____**

The Customer hereby acknowledges that the following conditions have been met and acknowledges the Acceptance Date below:

1. all of the Equipment ordered pursuant to this Agreement has been delivered to the Customer at the receiving location designated by Customer;
2. all of the Equipment has been installed at the agreed upon Equipment Sites as identified in Attachment C) and is operational.

CUSTOMER:

CITY OF MIAMI BEACH

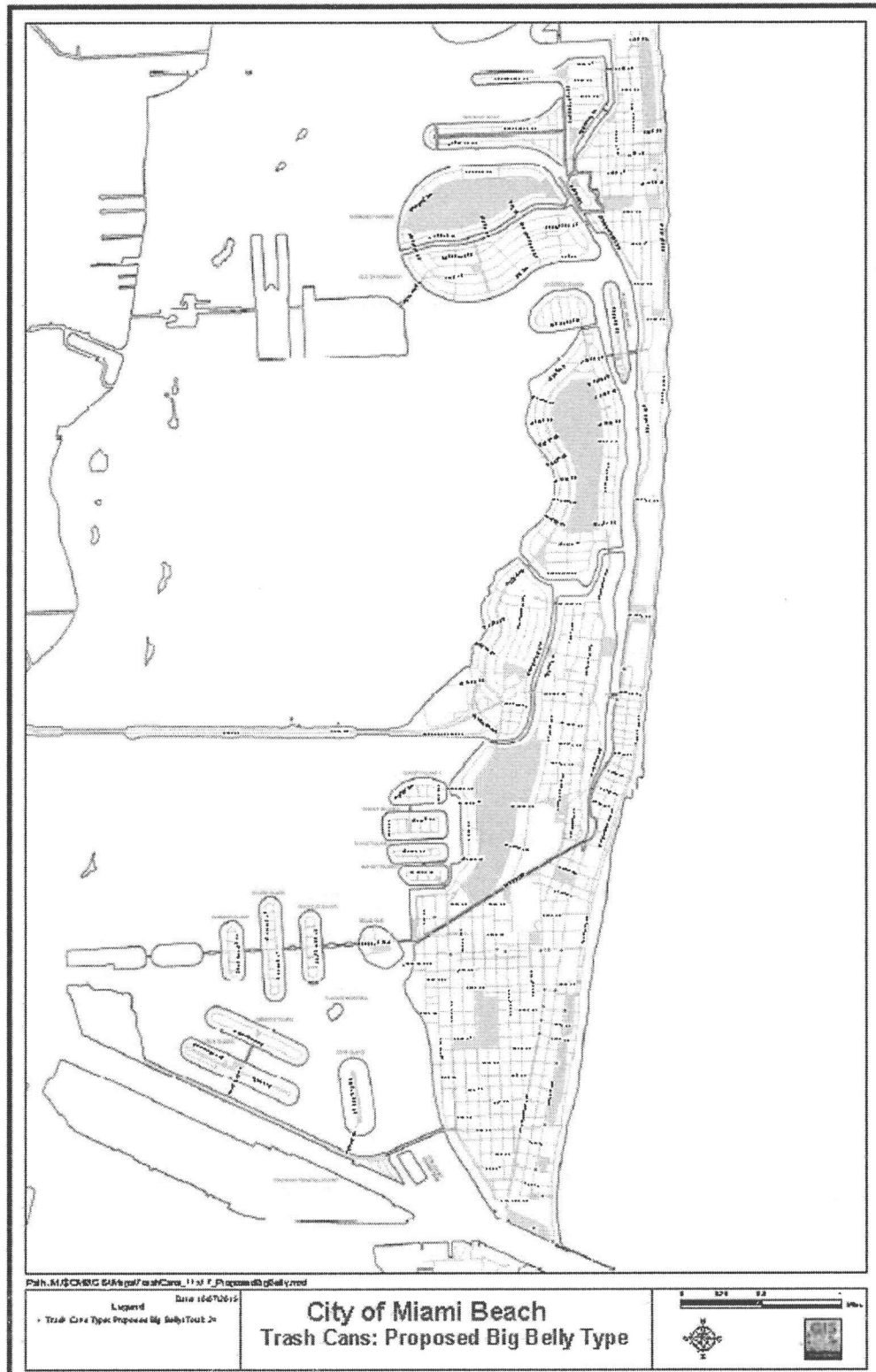
By: _____

Print Name and Title: _____

Date: _____

ATTACHMENT C

EQUIPMENT SITES



**ATTACHMENT D
CUSTOMER TRAINING PLAN**

Timeframe	Customer Training Agenda
Upon PO	<ul style="list-style-type: none">• Review the Connect Guidelines to set expectations.• Highlight site selection and partnership to maintain system in great working condition.• Establish criteria for success and how to measure them.
1-3 Weeks Prior to Installation	<ul style="list-style-type: none">• Update CLEAN software system with user names so users can access the system
Upon Installation	<p>At a mutually agreed upon time, Bigbelly will train users to use the CLEAN software for optimal results. Training includes site customization:</p> <ul style="list-style-type: none">○ Setting up users○ Updating station location descriptions○ Establishing groups○ Setting up Email notifications.○ How to make adjustments in the system and using the alert notifications to address any hardware/software issues.
1 Week After Initial CLEAN Training	<ul style="list-style-type: none">• Reach out for feedback and adjustments to system set up.• Answer any questions
1 Month After Installation	<ul style="list-style-type: none">• Review reports and how to extract data
Monthly Thereafter	<ul style="list-style-type: none">• Provide a monthly summary of performance against goals.

END OF ATTACHMENT D

ATTACHMENT E
RENEWAL TERM PRICING

Upon the renewal of the Agreement as set forth in Section 1.2 therein, the following pricing shall apply:

Renewal Service Fees	Cost
Equipment Insurance Fee: Total Annual Cost (Paid in advance annually) *Insurance is provided for all stations as a fleet, not per individual station. Customer is responsible for paying the applicable Deductible which shall apply on a per incident basis. The cost of the policy thereunder shall be subject to annual adjustment on the policy anniversary date (Nov 1 st).	\$3,500.00
Total Monthly Service Fee (Paid in advance monthly) *Based on a 24 month Renewal Term. **Limited to the configuration of Existing Stations and New Stations as described in the Service Schedule of the Agreement.	\$5,627.10

Customer has authorization for a total cost of \$495,000 for insurance and the Monthly Service Fee for the Term of the Agreement, including the Renewal Term, if exercised; therefore, the total Monthly Service Fee, for a term of up to five (5) years, may not exceed the authorized total cost.

END OF ATTACHMENT E.

**ATTACHMENT F
REPLACEMENT COST**

QTY	ITEM	EXTENDED PRICE
1	Replacement of BB5 Double Station with Side Message Panels and Ash Tray <ul style="list-style-type: none">○ De-installation of Old Station○ Installation of New Station	\$6,030.00
1	Replacement of BB5 Single Station with Side Message Panels and Ash Tray <ul style="list-style-type: none">○ De-installation of Old Station○ Installation of New Station	\$4,364.00

All pricing in this Attachment F is provided as an estimate only and is subject to change at the time the order is placed. Shipping costs and applicable taxes are not included in the above pricing and will be calculated at the time of order.

END OF ATTACHMENT F.

ATTACHMENT G
BIGBELLY SERVICE AGREEMENT
MAINTENANCE STANDARDS

Without limiting Section 3.1(F) and Section 4.2 of the Agreement, Bigbelly agrees to repair and replace the equipment when the following excessive wear occurs:

Exterior	
Side panels	Color fading – material color loss or evidence of significant cracking and/or chalking due to weather exposure (NOT to include color degradation caused by chemical cleaner or other chemical reaction); fading of the silkscreen or hot stamp graphics; broken or cracked panels missing graphics or rust
Solar bubble	Broken, cracked or substantial Yellowing; loss of clarity due to improper cleaning;
Hopper skin	Broken or cracked hopper; color fading overtime; or rust
Front door	Deep scratches and dents larger than one inch
Rear panel/Rear door	Deep scratches and dents larger than one inch; or rust
Interface & Internal	
Hopper hard stops and hopper bearings	Broken stops causing hopper to travel past its stop point.
Front door lock	Bent or disabled lock due to broken key, or door being pried open; inability to insert key or turnkey in lock; scratches larger than one inch; worn powder coating
Battery cables/connections	Wires damaged by electrical storms; corrosion on terminals such that battery function is compromised.

Hopper handle	Broken or missing handle; gouges in aluminum.
Base and inside	Structural rust on metal parts; broken areas of plastic base.
Hopper internal surface	Corrosion on metal surface.

Graffiti and minor scratches cosmetic scratches may be repaired by Customer, by purchasing the paint and other materials from Bigbelly.

END OF ATTACHMENT G.

**ATTACHMENT H
SPECIMEN POLICY**

Property Insurance

Building And Personal Property

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Contract

Words and phrases that appear in **bold** print have special meanings and are defined in the Property/Business Income Conditions And Definitions form included in this policy.

Throughout this contract, the words "you" and "your" refer to the Named Insured shown in the Declarations of this policy. The words "we", "us" and "our" refer to the company providing this insurance.

Premises Coverages

The following Premises Coverages apply only at those premises for which a Limit Of Insurance applicable to such coverages is shown in the Declarations.

Except as otherwise provided, the loss or damage must:

- be caused by or result from a peril not otherwise excluded; and
- occur at, or within 1,000 feet of, the premises shown in the Declarations.

Building Or Personal Property

We will pay for direct physical loss or damage to:

- **building;** or
- **personal property,**

caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Building Or Personal Property shown in the Declarations.

Burglary Damage To Building

We will pay for direct physical loss or damage to a **building**:

- you do not own;
- you occupy; and
- for which you are contractually liable,

caused by or resulting from burglary or any attempt at burglary, not to exceed the Limit Of Insurance for Personal Property shown in the Declarations for the premises where the loss or damage occurred.

This Premises Coverage does not apply:

- to ensuing loss or damage caused by or resulting from a peril not otherwise excluded; or
- if a Limit Of Insurance for Building applicable to the premises, where the loss or damage occurred, is shown in the Declarations.

Fungus Clean-up Or Removal

We will pay the costs you incur to clean up, remove, restore or replace covered property because of the presence of **fungus** at the premises shown in the Declarations.

The most we will pay at the premises for the sum of all such covered costs that occur during each separate 12-month policy period, regardless of whether this Premises Coverage appears in any other contract or contracts that form part of this policy is the applicable Limit Of Insurance for Fungus Clean-up Or Removal shown in the Declarations.

Premises Coverages

Fungus Clean-up Or Removal (continued)

We will not pay for the costs to test for, monitor, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of **fungus**, other than payment for testing that is performed during the clean-up or removal of **fungus**.

This Premises Coverage does not apply if the presence of **fungus**:

- A. is caused by or results from:
 - 1. a peril that is excluded under this insurance; or
 - 2. moisture, other than **water** or **flood**, if the **flood** would be covered under this insurance;
- B. existed prior to the effective date shown in the Declarations;
- C. is not reported to us in writing as soon as possible after you first become aware, or in the exercise of reasonable care, should have become aware, of the presence of **fungus**; or
- D. is at premises that has been specifically excluded in the Declarations or by endorsement to this policy.

Leasehold Interest - Bonus Payment, Prepaid Rent, Sublease Profit, Tenants' Lease Interest

We will pay for the:

- **bonus payment;**
- **prepaid rent;**
- **sublease profit; or**
- **tenants' lease interest,**

loss you incur directly resulting from the cancellation of your written lease for the premises shown in the Declarations, not to exceed the applicable Limit Of Insurance for:

- Bonus Payment;
- Prepaid Rent;
- Sublease Profit; or
- Tenants' Lease Interest,

shown under Leasehold Interest in the Declarations.

Cancellation of the lease must be:

- by the lessor;
- by a valid condition of your lease; and
- due to direct physical loss or damage to a **building** caused by or resulting from a peril not otherwise excluded at the premises shown in the Declarations.

Leasehold Interest - Undamaged Tenant's Improvements And Betterments

We will pay for the value of undamaged **tenant's improvements and betterments** when your lease is canceled:

- by the lessor; and
- by a valid condition of your lease,

Premises Coverages**Leasehold Interest -
Undamaged Tenant's
Improvements And
Betterments
(continued)**

due to direct physical loss or damage to **building or personal property** caused by or resulting from a peril not otherwise excluded at the premises shown in the Declarations, not to exceed the applicable Limit Of Insurance for Leasehold Interest - Undamaged Tenant's Improvements And Betterments shown in the Declarations.

Loss Of Master Key

We will pay for the reasonable and necessary costs you incur to:

- replace keys;
- adjust locks to accept new keys; or
- if required, install new locks,

due to direct physical loss or damage to a master key or grand master key caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Loss Of Master Key shown in the Declarations.

**Loss Prevention
Expenses**

We will pay the reasonable and necessary costs you incur to protect:

- **building;**
- **personal property;** or
- **research and development property,**

at the premises shown in the Declarations from imminent direct physical loss or damage caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Loss Prevention Expenses shown in the Declarations.

To the extent possible, you must notify us of your intent to incur such cost before you take any loss prevention action.

In any event, you must notify us within forty-eight (48) hours after you have taken any loss prevention action.

**Non-Owned Detached
Trailers**

We will pay for direct physical loss or damage to **non-owned detached trailers** caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Non-Owned Detached Trailers shown in the Declarations.

**Outdoor Trees, Shrubs,
Plants Or Lawns**

We will pay for direct physical loss or damage to **outdoor trees, shrubs, plants or lawns** at premises you own, rent or occupy, shown in the Declarations, caused by or resulting from:

- fire;
- lightning;
- explosion;
- riot or civil commotion; or
- aircraft or self-propelled missiles,

Premises Coverages

Outdoor Trees, Shrubs, Plants Or Lawns (continued)

not to exceed the applicable Limit Of Insurance for Outdoor Trees, Shrubs, Plants Or Lawns shown in the Declarations.

Pair And Set

We will pay for consequential loss to undamaged **personal property** that is part of:

- your product; or
- any product in your care, custody or control,

which has become unmarketable as a complete product, because of covered direct physical loss or damage to **personal property** which is part of the same product, not to exceed the applicable Limit Of Insurance for Pair And Set shown in the Declarations.

This Premises Coverage applies only when you have purchased a Limit Of Insurance for Personal Property.

Personal Property Of Employees

We will pay for direct physical loss or damage to **personal property of employees** caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Personal Property Of Employees shown in the Declarations.

We will also pay for direct physical loss or damage to **personal property of employees** caused by or resulting from a peril not otherwise excluded while such **personal property of employees** is away from your premises for the purpose of performing duties relating to the conduct of your business, not to exceed \$2,500 for any one employee or \$10,000 in the aggregate for any occurrence, regardless of the number of employees.

Processing Water

We will pay the cost you incur to replace water that is used in your processing operations and contained in any:

- above-ground tank;
- processing equipment; or
- any associated above-ground piping,

when such water has been released or rendered unusable for its intended purpose as a direct result of direct physical loss or damaged to such tank, equipment or piping caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Processing Water shown in the Declarations.

The loss or damage must occur at the premises show in the Declarations.

This Premises Coverage does not apply to fire protection equipment.

Premises Coverages
(continued)**Public Safety Service Charges**

We will pay the charges you:

- assume under any contract or agreement; or
- are required to pay by local ordinance,

in effect at the time of the direct physical loss or damage, if a fire department or other municipal agency charged with preserving public safety is called to save or protect **building, personal property or research and development property** from direct physical loss or damage caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Public Safety Service Charges shown in the Declarations.

Removal

We will pay for direct physical loss or damage to **building components, personal property or research and development property** while:

- being moved to another location or returned from such location to its original location; or
- temporarily stored at another location,

if you must move the **building components, personal property or research and development property** from such location to preserve it from imminent loss or damage caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Building, Personal Property or Research And Development Property shown in the Declarations.

Research And Development Property

We will pay for:

- direct physical loss or damage to **research and development property** caused by or resulting from a peril not otherwise excluded; and
- the necessary and reasonable additional cost you incur to repair or replace **research and development property** that has been lost or damaged by a peril not otherwise excluded,

not to exceed the applicable Limit Of Insurance for Research and Development Property shown in the Declarations.

These additional costs must be in excess of the cost you would otherwise incur to repair or replace lost or damaged **research and development property** in order to meet your last scheduled introduction date (prior to loss or damage) for any new product which is based on such **research and development property**.

Additional Coverages

The following Additional Coverages apply within the coverage territory.

Any Other Location

We will pay for direct physical loss or damage caused by or resulting from a peril not otherwise excluded to:

- **building components;**
- **personal property; or**
- **research and development property,**

Additional Coverages

Any Other Location (continued)

at unspecified premises, not to exceed the applicable Limit Of Insurance for:

- Building Components;
- Personal Property; or
- Research and Development Property,

shown under Any Other Location in the Declarations.

This Additional Coverage does not apply to:

- **salespersons' samples;**
- property while at any exhibition, fair or trade show;
- property at newly acquired premises;
- property while **in transit**; or
- property at a job site or temporarily warehoused elsewhere awaiting installation at the job site.

This Additional Coverage applies only if a Limit Of Insurance for:

- Building Components;
- Personal Property; or
- Research And Development Property,

is shown under Any Other Location in the Declarations.

Arson Or Theft Reward

We will pay a reward of 25% of the covered loss or damage, up to a maximum of \$25,000, for information leading to a felony conviction arising out of direct physical loss or damage to covered property caused by or resulting from arson, larceny, burglary or vandalism.

Deferred Payments

We will pay for your interest in **personal property** that suffers direct physical loss or damage caused by or resulting from a peril not otherwise excluded and sold by you under a conditional sale or trust agreement or any installment or deferred payment plan:

- while **in transit** to buyers; or
- after delivery to buyers,

not to exceed the applicable Limit Of Insurance for Deferred Payments shown in the Declarations.

This Additional Coverage does not apply to default by the buyer of such agreement or plan.

This Additional Coverage applies only if a Limit Of Insurance for Deferred Payments is shown in the Declarations.

Additional Coverages
(continued)**Exhibition, Fair Or Trade Show**

We will pay for direct physical loss or damage to **personal property** caused by or resulting from a peril not otherwise excluded while:

- **in transit** to or from any exhibition, fair or trade show; or
- at any exhibition, fair or trade show,

not to exceed the applicable Limit Of Insurance for Personal Property shown under Exhibition, Fair Or Trade Show in the Declarations.

This Additional Coverage does not apply to:

- **electronic data processing property**; or
- **fine arts.**

This Additional Coverage applies only if a Limit Of Insurance for Personal Property is shown under Exhibition, Fair Or Trade Show in the Declarations.

Fire Protection Equipment

We will pay the cost you incur to refill your discharged fire protection equipment whether or not there is direct physical loss or damage to property.

This Additional Coverage is provided regardless of whether a Limit Of Insurance is shown in the Declarations.

Installation

We will pay for direct physical loss or damage to **personal property** caused by or resulting from a peril not otherwise excluded while such **personal property** is:

A. at a job site or temporarily warehoused elsewhere:

1. awaiting and during installation;
2. awaiting and during tests; or
3. awaiting acceptance by the buyer,

not to exceed the applicable Limit Of Insurance for Any Job Site shown under Installation in the Declarations; or

B. **in transit** to or from such job site or temporary warehouse, not to exceed the applicable Limit Of Insurance for In Transit shown under Installation in the Declarations.

We will not pay for any loss or damage to:

- **personal property** not a part of or destined to become part of the installation;
- tools; or
- **contractors' equipment.**

This Additional Coverage ends when the first of the following occurs:

- your interest in the **personal property** ceases;
- the buyer accepts the **personal property**;
- the **personal property** is put to use for its intended purpose; or

Additional Coverages

Installation (continued)

- this policy is terminated.

This Additional Coverage applies only if a Limit Of Insurance for Any Job Site or In Transit is shown under **Installation** in the Declarations.

In Transit

We will pay for direct physical loss or damage to:

- A. **personal property, building components, or research and development property while in transit;**
- B. **personal property** being shipped FOB or on other similar terms after the title of a shipment passes to the consignee; or
- C. **personal property** which has been refused by the consignee, from the time such property has been refused until:
 - 1. the time such property is returned to your premises; or
 - 2. 14 consecutive days after such property has been refused,whichever occurs first,

caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Personal Property, Building Components or Research And Development Property shown under **In Transit** in the Declarations.

We will not attempt to collect from the consignee, unless you:

- provide us with your written consent to do so; or
- assign us your right of action.

We will also pay for:

- A. the necessary additional expenses you incur to inspect, repackage and reship **personal property** damaged by a peril not otherwise excluded;
- B. general average and salvage charges that may be assessed against your covered **personal property** shipments that are waterborne; and
- C. loss or damage to **personal property** during loading and unloading of that property from a transporting conveyance, by a peril not otherwise excluded,

not to exceed the applicable Limit Of Insurance for Personal Property shown under **In Transit** in the Declarations.

This Additional Coverage does not apply:

- to any **personal property, building components or research and development property while in transit** to or from any exhibition, fair or trade show;
- to **salespersons' samples;**
- when you are acting as a carrier for hire;
- if you have purchased separate ocean marine insurance that covers any property **in transit;**
- to shipments by mail, unless registered;
- to **electronic data processing property;**

Additional Coverages

**In Transit
(continued)**

- to **fine arts**; or
- to loss or damage to any property insured under the International Air Shipments Additional Coverage.

International Air Shipments

We will pay for direct physical loss or damage to **personal property** caused by or resulting from a peril not otherwise excluded while being shipped by air to or from:

- the contiguous United States of America;
- Canada;
- the State of Alaska;
- the State of Hawaii;
- Puerto Rico; or
- territories or possessions of the United States of America or Canada,

and points worldwide, not to exceed the applicable Limit Of Insurance for Personal Property shown under International Air Shipments in the Declarations. This coverage applies from the delivery of **personal property** at the point of origin shown in the air waybill until it is discharged at the destination shown in the air waybill.

This Additional Coverage does not apply:

- to **personal property** while being shipped by air to or from any exhibition, fair or trade show;
- if you have purchased separate ocean marine insurance which covers any **personal property** being shipped by air;
- to shipments by mail;
- if you are required to provide a negotiable special cargo policy of insurance to any seller, buyer or bank;
- to **electronic data processing property**;
- to **fine arts**; or
- to loss or damage to any property insured under the In Transit Additional Coverage.

Newly Acquired Property

We will pay for direct physical loss or damage to:

- **building** under construction at existing or newly acquired premises;
- **building or personal property** at newly acquired premises; or
- newly acquired **personal property** at existing premises shown in the Declarations

caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Building or Personal Property shown in the Declarations under Newly Acquired Premises or Newly Acquired or Constructed Property.

Additional Coverages

Newly Acquired Property (continued)

This Additional Coverage applies until the first of the following occurs:

- you report the value of the **building or personal property** at the newly acquired premises to us and we add such **building or personal property** to this policy;
- you report the value of the newly acquired **personal property** at the existing premises shown in the Declarations, and we add such **personal property** to this policy;
- 180 days pass from the date you acquire the premises, **personal property**, or construction begins on the **building**; or
- this policy expires.

We will charge you additional premium for the reported values from the date you acquire the premises or **personal property**, or construction begins on the **building**, if we add such premises, **personal property** or **building** to this policy.

Personal property being moved from a vacated premises to a new premises is not considered newly acquired **personal property**.

Pollutant Clean-up Or Removal

We will pay the costs you incur to clean up or remove **pollutants** from land, water or air:

- A. at the premises shown in the Declarations and either inside or outside of a **building**; or
- B. if the **pollutants** were part of:
 - 1. **personal property**;
 - 2. **research and development property**; or
 - 3. **building components**,while in transit,

if the discharge, dispersal, seepage, migration, release or escape of the **pollutants** is caused by or results from a peril not otherwise excluded.

The costs will be paid only if they are reported to us in writing within 180 days of the date the peril occurred which caused or resulted in the discharge, dispersal, seepage, migration, release or escape of the **pollutants**.

The most we will pay:

- at a premises shown in the Declarations; and
- for any property in transit,

for all such covered costs that occur during each separate 12-month policy period, regardless of whether this Additional Coverage appears in any other contract or contracts that form part of this policy, is the applicable Limit Of Insurance for Pollutant Clean-up Or Removal shown in the Declarations.

We will not pay for the costs to test for, monitor, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of **pollutants**, other than payment for testing that is performed during the clean up or removal of the **pollutants** from the land, water or air, either inside or outside of a **building**.

Additional Coverages**Pollutant Clean-up Or Removal**
(continued)

This Additional Coverage does not apply if the discharge, dispersal, seepage, migration, release or escape of **pollutants**:

- is caused by or results from a peril that is excluded under this insurance; or
- occurred prior to the effective date shown in the Declarations.

Preparation Of Loss Fees

We will pay the reasonable and necessary expenses we require you to incur after covered direct physical loss or damage to:

- **building;**
- **personal property;**
- **personal property of employees;**
- **research and development property;** or
- **outdoor trees, shrubs, plants or lawns,**

to determine the extent of such loss or damage, not to exceed the applicable Limit Of Insurance for Preparation Of Loss Fees shown in the Declarations.

This Additional Coverage does not apply to any expenses you incur for any:

- insurance adjuster, consultant, or attorney; or
- of your subsidiaries or affiliates.

Salespersons' Samples

We will pay for direct physical loss or damage to **salespersons' samples** caused by or resulting from a peril not otherwise excluded, not to exceed the Limit Of Insurance for Salespersons' Samples shown in the Declarations.

This Additional Coverage applies only if a Limit Of Insurance for Salespersons' Samples is shown in the Declarations.

Debris Removal Coverage

The following Debris Removal Coverage applies.

Debris Removal

A. We will pay for the costs you incur to:

1. demolish and remove debris of damaged **building, personal property, personal property of employees** or **research and development property** caused by or resulting from a peril not otherwise excluded that occurs during the policy period; or
2. remove debris of damaged **outdoor trees, shrubs, plants or lawns** at the premises shown in the Declarations, caused by or resulting from the perils of fire, lightning, explosion, riot or civil commotion or aircraft or self-propelled missiles that occurs during the policy period.

B. The most we will pay for debris removal is the lesser of:

1. 25% of the covered direct physical loss or damage; or

Debris Removal Coverage

Debris Removal (continued)

2. the remaining applicable Limit Of Insurance for Building, Personal Property, Personal Property Of Employees, Research and Development Property or Outdoor Trees, Shrubs, Plants Or Lawns shown in the Declarations, after payment of the covered direct physical loss or damage.
- C. If the amount in B. above is insufficient to pay the debris removal, we will pay the remaining debris removal, subject to the applicable Limit Of Insurance shown under Debris Removal in the Declarations.

We will also pay up to \$1,000 for the costs you incur at each premises to remove debris that is blown onto your premises by wind, if the wind would be covered by this insurance.
- D. Debris removal will be paid only if:
 1. reported to us in writing within 180 days of the date of the direct physical loss or damage to the **building, personal property, personal property of employees, research and development property or outdoor trees, shrubs, plants or lawns**; and
 2. a Limit Of Insurance applicable to the damaged **building, personal property, personal property of employees, research and development property or outdoor trees, shrubs, plants or lawns** is shown in the Declarations.
- E. Debris removal does not apply to costs to:
 1.
 - a. clean up or remove **pollutants** from land, water or air;
 - b. clean up, remove, restore or replace covered property because of the presence of **fungus**; or
 - c. clean up, remove, restore or replace polluted land, water or air, either inside or outside of a **building**; or
 2. demolish and clear the site of the undamaged portion of the **building**.

Policy Exclusions

The following Policy Exclusions apply to all the coverages in this contract.

Acts Or Decisions

This insurance does not apply to loss or damage caused by or resulting from acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

This Acts Or Decisions exclusion does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

Business Errors

This insurance does not apply to loss or damage caused by or resulting from errors in the:

- altering;
- calibrating;
- constructing;
- developing;
- distributing;

Policy Exclusions

Business Errors
(continued)

- installing;
- manufacturing;
- maintaining;
- processing;
- repairing;
- researching; or
- testing,

of part or all of any property.

This Business Errors exclusion does not apply to:

- loss or damage that results to other covered property; or
- ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

Dishonesty

This insurance does not apply to loss or damage caused by or resulting from fraudulent, dishonest or criminal acts or omission committed alone or in collusion with others by you, your partners, members, officers, managers, directors, trustees, employees, anyone performing acts coming within the scope of the usual duties of your employees, or by anyone authorized to act for you, or anyone to whom you have entrusted covered property for any purpose.

This Dishonesty exclusion does not apply to:

- A. acts of vandalism;
- B. acts committed by carriers or warehousemen for hire or anyone claiming to be a carrier or warehousemen for hire, other than:
 1. you, your partners, directors, trustees and employees;
 2. anyone performing acts coming within the scope of the usual duties of your employees; or
 3. anyone authorized to act for you; or
- C. ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

Governmental Or Military Action

This insurance does not apply to loss or damage caused by or resulting from seizure, confiscation, expropriation, nationalization or destruction of property by order of governmental or military authority, whether de jure or de facto, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

Policy Exclusions

Governmental Or Military Action (continued)

This Governmental Or Military Action exclusion does not apply to loss or damage caused by or resulting from acts of destruction ordered by governmental or military authority:

- A. when taken at the time of a fire to prevent its spread, if the fire would be covered under this insurance; or
- B. if the act of destruction is made necessary by direct physical loss or damage to:
 - 1. **personal property while in transit**; or
 - 2. a conveyance in or on which **personal property while in transit** is loaded, caused by or resulting from a specified peril not otherwise excluded.

Inherent Vice/Latent Defect

This insurance does not apply to loss or damage caused by or resulting from inherent vice or latent defect.

This Inherent Vice/Latent Defect exclusion does not apply to:

- loss or damage caused by or resulting from a **specified peril**; or
- ensuing loss or damage caused by or resulting from a **specified peril or water**.

Insects Or Animals

This insurance does not apply to loss or damage caused by or resulting from nesting or infestation by, or discharge or release of waste products or secretions of any insect or other animal.

This Insects Or Animals exclusion does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

Mechanical Breakdown (Other Than Abrupt And Accidental)

This insurance does not apply to loss or damage caused by or resulting from mechanical breakdown.

This Mechanical Breakdown (Other Than Abrupt And Accidental) exclusion does not apply to:

- A. abrupt and accidental breakdown of **mechanical or electrical system or apparatus** which causes direct physical loss or damage to all or part of that **mechanical or electrical system or apparatus** provided the direct physical loss or damage becomes manifest at the time of the breakdown that caused it.

Abrupt and accidental breakdown of **mechanical or electrical system or apparatus** does not include:

- 1. rust, oxidation or corrosion;
- 2. faulty, inadequate or defective design, plan, specifications or installation;
- 3. failure of **mechanical or electrical system or apparatus** to perform in accordance with plans or specifications; or
- 4. freezing caused by or resulting from weather conditions; or
- B. ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

Policy Exclusions
(continued)**Nuclear Hazard**

This insurance does not apply to loss or damage caused by or resulting from nuclear reaction or radiation, or radioactive contamination, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Nuclear Hazard exclusion does not apply to ensuing loss or damage to:

- **building;**
- **personal property;**
- **personal property of employees;** or
- **research and development property,**

caused by or resulting from fire, if the fire would be covered under this insurance and there is a law in effect in the jurisdiction where the loss or damage occurs that expressly prohibits us from excluding such ensuing loss or damage.

**Planning, Design,
Materials Or
Maintenance**

This insurance does not apply to loss or damage (including the costs of correcting or making good) caused by or resulting from any faulty, inadequate or defective:

- planning, zoning, development, surveying, siting;
- design, specifications, plans, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- materials used in repair, construction, renovation or remodeling; or
- maintenance,

of part or all of any property on or off the premises shown in the Declarations.

This Planning, Design, Materials Or Maintenance exclusion does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

Utility Supply Failure

This insurance does not apply to loss or damage caused by or resulting from suspension or reduction of:

- water services;
- electrical or other power services;
- natural gas or other fuel services; or
- Internet or other communication services,

regardless of any other cause or event that:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

Policy Exclusions

Utility Supply Failure (continued)

This Utility Supply Failure exclusion does not apply:

- if the suspension or reduction of such services is the direct result of direct physical loss or damage caused by or resulting from a peril not otherwise excluded; or
- to ensuing loss or damage caused by or resulting from a **specified peril**.

War And Military Action

This insurance does not apply to loss or damage caused by or resulting from:

- war, including undeclared or civil war;
- warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- insurrection, rebellion, revolution, usurped power or action taken by governmental or military authority, whether de jure or de facto, in hindering or defending against any of these,

regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

Wear And Tear

This insurance does not apply to loss or damage caused by or resulting from wear and tear or deterioration.

This Wear And Tear exclusion does not apply to ensuing loss or damage caused by or resulting from a **specified peril** or **water**.

Additional Exclusions

The following Additional Exclusions apply to all coverages in this contract except:

- In Transit Additional Coverage;
- International Air Shipments Additional Coverage;
- Research And Development Property Premises Coverage; and
- Salespersons' Samples Additional Coverage.

Disappearance

This insurance does not apply to loss or damage caused by or resulting from:

- disappearance; or
- shortage disclosed on taking inventory,

where there is no physical evidence to show what happened.

This Disappearance exclusion does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

Additional Exclusions
(continued)

Earthquake

This insurance does not apply to loss or damage caused by or resulting from earthquake, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Earthquake exclusion does not apply to ensuing loss or damage caused by or resulting from a **specified peril**.

Errors In Systems Programming

This insurance does not apply to loss or damage caused by or resulting from:

- A. errors or omissions in the development of, programming of, or instructions to:
 1. **electronic data processing property**; or
 2. a machine; or
- B. **electronic data** which is faulty, inadequate or defective for the use intended at the time of loss or damage.

This Errors In Systems Programming exclusion does not apply to ensuing loss or damage caused by or resulting from a **specified peril**.

Flood

This insurance does not apply to loss or damage caused by or resulting from:

- waves, tidal water or tidal waves; or
- rising, overflowing or breaking of any boundary,

of any natural or man-made lakes, reservoirs, ponds, brooks, rivers, streams, harbors, oceans or any other body of water or watercourse, whether driven by wind or not, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Flood exclusion does not apply to ensuing loss or damage caused by or resulting from a **specified peril**.

Fungus

This insurance does not apply to loss or damage:

- which is **fungus**;
- which is in anyway attributed to the presence of **fungus**; or
- caused by or resulting from **fungus**,

regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or

Additional Exclusions

Fungus **(continued)**

- contributes in any sequence to, the loss or damage, even if such cause or event would otherwise be covered.

This Fungus exclusion does not apply:

- A. when the presence of **fungus** results from:
 - 1. explosion;
 - 2. fire;
 - 3. leakage from fire protection equipment; or
 - 4. lightning; or
- B. to the extent insurance is provided under the Fungus Clean-up Or Removal Premises Coverage.

Pollutants

This insurance does not apply to loss or damage caused by or resulting from the mixture of or contact between property and a **pollutant** when such mixture or contact causes the property to be impure and harmful to:

- itself or other property;
- persons, animals or plants;
- land, water or air; or
- any other part of an environment,

either inside or outside of a building or other structure, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Pollutants exclusion does not apply to:

- A. the mixture of or contact between property and **pollutants** if the mixture or contact is directly caused by or directly results from a **specified peril**;
- B. any solid, liquid or gas used to suppress fire; or
- C. **water**.

Paragraphs B and C do not apply to loss or damage involving:

- viruses or pathogens; or
- ammonia.

Additional Exclusions*(continued)***Settling**

This insurance does not apply to loss or damage caused by or resulting from settling, cracking, shrinking, bulging or expansion of land, paved or concrete surfaces, foundations, pools, **buildings** or other structures.

This Settling exclusion does not apply to ensuing loss or damage caused by or resulting from a **specified peril**.

Limits Of Insurance

Except as provided under Fungus Clean-up Or Removal and Pollutant Clean-up Or Removal, the most we will pay in any **occurrence** is the amount of loss or damage, not to exceed the applicable Limit Of Insurance shown in the Declarations.

If any Premises Coverage or Additional Coverage appears in more than one contract which form a part of this policy, unless otherwise specified, the applicable Limit Of Insurance shown in the Declarations for such coverages is the most we will pay in any **occurrence**, regardless of the number of contracts in which such Premises Coverage or Additional Coverage appears.

Building Extended Limit Of Insurance

If an Extended Limit Of Insurance for Building is shown in the Declarations, the most we will pay in any **occurrence** is the amount of loss or damage, not to exceed 125% of the applicable Limit Of Insurance for Building shown in the Declarations.

The Extended Limit Of Insurance for Building:

- applies only to a premises shown in the Declarations for which the Extended Limit Of Insurance is shown; and
- does not apply to any Limit Of Insurance applicable to more than one **building** or **building** and any other coverage combined.

Automatic Increase In Limits

The Limits Of Insurance for Building or Personal Property will automatically increase by the annual percentage shown in the Declarations under Automatic Increase In Limits. At the time of loss or damage, the amount of increase will be determined by multiplying the applicable Limit Of Insurance shown in the Declarations by the percentage of annual increase applied on a pro rata basis.

This Automatic Increase In Limits:

- A. applies only to a premises shown in the Declarations for which the Automatic Increase In Limits is shown; and
- B. does not apply to any Limit of Insurance applicable to:
 - 1. more than one **building**;
 - 2. **personal property** in more than one **building**;
 - 3. **building** and **personal property** combined; or
 - 4. **building** or **personal property** combined with any other coverage.

Deductible

Subject to the applicable Limit Of Insurance, we will pay the amount of loss or damage, after application of Coinsurance if applicable, in excess of the applicable deductible amount shown in the Declarations for each **occurrence**.

If two or more deductibles apply to the same **occurrence**, only the largest single deductible will apply, unless otherwise stated.

Loss Payment Basis

The following Loss Payment Basis provisions apply to all coverages contained within this contract, unless otherwise stated.

Subject to the applicable Limit Of Insurance shown in the Declarations:

- A. covered property is valued on a replacement cost basis as described below, unless:
1. the Loss Payment Basis shown in the Declarations is Actual Cash Value; or
 2. otherwise stated under Loss Payment Basis Exceptions; and
- B. valuation also includes, for **building or personal property**, costs you incur as described below under Ordinance Or Law, Construction Fees, Brands And Labels and Extended Warranties.

Our Loss Payment Options

In the event of loss or damage covered by this insurance, at our option, we will either:

- pay the covered value of the lost or damaged covered property;
- pay the cost of repairing or replacing the lost or damaged covered property plus any reduction in value of the repaired item;
- take all or any part of the covered property at an agreed or appraised value; or
- repair or replace the covered property with other such property of comparable material and quality for the same use or occupancy.

Replacement Cost Basis

Lost or damaged covered property will be valued at the cost to repair or replace such property at the time of loss or damage, but not more than you actually spend to repair or replace such property at the same or another location for the same use or occupancy. There is no deduction for physical deterioration or depreciation.

If you replace the lost or damaged covered property, the valuation will include customs duties incurred.

If you do not repair or replace the covered property, we will only pay as provided under Actual Cash Value Basis.

If you commence the repair or replacement of the lost or damaged covered property within 24 months from the date of the loss or damage, we will pay you the difference between the actual cash value previously paid and the lesser of the:

- replacement cost at the time of loss or damage; or
- actual costs you incur to repair or replace.

Payment under the Replacement Cost Basis will not be made until the completion of the repairs or the replacement of the covered property.

Loss Payment Basis*(continued)***Actual Cash Value Basis**

If the Loss Payment Basis shown in the Declarations is Actual Cash Value, lost or damaged covered property will be valued at the cost to repair or replace such property at the time of loss or damage with material of like kind and quality, less allowance for each of the following:

- physical deterioration;
- physical depreciation;
- obsolescence; and
- depletion.

Ordinance Or Law

If there is an ordinance or law in effect at the time of loss or damage that regulates zoning, land use or construction of a **building or personal property**, and if that ordinance or law affects the repair or replacement of the lost or damaged **building or personal property**, and if you:

- A. repair or replace the **building or personal property** as soon as reasonably possible, the valuation will include:
1. a. the replacement cost of the damaged and undamaged portions of the **building or personal property**; or
 - b. the actual cash value of the damaged and undamaged portions of the **building or personal property** (if the applicable Loss Payment Basis shown in the Declarations is Actual Cash Value);
 2. the costs to demolish and clear the site of the undamaged portion of the **building or personal property**; and
 3. the increased cost to repair or replace the **building** to the same general size at the same site or **personal property** for the same general use, to the minimum standards of such ordinance or law, except we will not include any costs:
 - a. for land, water or air, either inside or outside of a **building**;
 - b. for paved or concrete surfaces, retaining walls, foundations or supports below the surface of the lowest floor or basement, unless specifically covered by this policy, or **outdoor trees, shrubs, plants or lawns**;
 - c. incurred outside the legal property boundary of the premises shown in the Declarations;
 - d. if **building or personal property** is valued on an actual cash value basis; or
 - e. attributable to any ordinance or law that you were required to, but failed to, comply with before the loss; or
- B. do not repair or replace the **building or personal property**, the valuation will include:
1. the actual cash value of the damaged and undamaged portions of the **building or personal property**; and
 2. the cost to demolish and clear the site of the undamaged portion of the **building or personal property**.

When direct physical loss or damage is caused by or results from both:

- a peril not otherwise excluded; and

Loss Payment Basis

Ordinance Or Law (continued)

- an excluded peril,

the valuation will not include the Ordinance Or Law costs attributable to the excluded peril. Instead, the valuation will be based on that portion of such costs equal to the proportion that the covered direct physical loss or damage bears to the total direct physical loss or damage, not including Ordinance Or Law costs, unless the Ordinance Or Law applies solely to that portion of the **building** or **personal property** which suffered the covered direct physical loss or damage.

This Loss Payment Basis does not apply to:

- any costs for undamaged **tenant's improvements and betterments** that are payable under the Leasehold Interest – Undamaged Tenant's Improvements and Betterments Premises Coverage;
- any increase in costs, loss or damage associated with the enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **fungus** or **pollutants**; or
- loss or damage caused by or resulting from fire which ensues from nuclear reaction or radiation, or radioactive contamination,

regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Ordinance Or Law Loss Payment Basis does not apply to the Fungus Clean-up Or Removal Premises Coverage or Pollutant Clean-up Or Removal Premises Coverage.

If a maximum value for ordinance or law is shown in the Declarations, then, subject to the applicable Limits Of Insurance shown in the Declarations, such maximum value is the most we will consider under Ordinance Or Law.

Construction Fees

Building and personal property valuation includes necessary and incurred architectural, engineering, consulting, decorating and supervisory fees related to the construction and repair of the lost or damaged **building** and **personal property**.

Brands And Labels

Personal property valuation includes the cost of:

- replacing labels, capsules, wrappers or containers from lost or damaged **personal property**; or
- identifying and reconditioning lost or damaged **personal property**.

In the event of loss or damage to **stock**, you have two options when:

- you do not want to sell your lost or damaged **stock** under your brand or label; or
- the owner of any lost or damaged **stock** in your care, custody or control does not want to sell that lost or damaged **stock** under the owner's brand or label,

even though the lost or damaged **stock** has salvage value, you may:

- remove the brand or label and then relabel the lost or damaged **stock** to comply with the law; or

Loss Payment Basis**Brands And Labels
(continued)**

- label the lost or damaged stock as "salvage" but, in doing so, cause no further loss or damage to the stock.

In either case, the **personal property** valuation will include the difference between:

- the salvage value of the lost or damaged stock with the brand or label attached; and
- the salvage value of the lost or damaged stock with the brand or label removed.

Extended Warranties

Personal property or **building components** valuation includes the pro rata portion of the original cost based on the period of time remaining in your nonrefundable extended warranties, maintenance contracts or service contracts that you purchased and which are no longer valid on lost or damaged:

- **personal property**; or
- **building components** consisting of permanently installed, or intended to be permanently installed, machinery and equipment,

that you repair or replace.

**Loss Payment Basis
Exceptions****Accounts Receivable
Records And Valuable
Papers**

Accounts receivable records and **valuable papers**, are valued based on the cost of blank materials and the cost of copying from a duplicate source on the same type of materials.

Deferred Payments

When a total loss occurs, coverage for Deferred Payments is valued based on the amount shown on your books as due from the buyer.

When partial loss or damage occurs and the buyer refuses to continue payment, forcing you to repossess, coverage for Deferred Payments will be valued as follows:

If the realized value of the repossessed **personal property** is:

- greater than or equal to the amount shown on your books as due from the buyer, we will make no payment; or
- less than the amount shown on your books as due from the buyer, we will pay the difference, less any amount that was past due by more than 30 days.

**Finished Stock And Sold
Personal Property**

Finished stock and sold **personal property** completed and awaiting delivery are valued based on your selling price less the value of discounts and costs you would have incurred.

**Loss Payment Basis
Exceptions**
(continued)

**Gold, Gold Salts And
Other Precious Metals**

Gold, gold salts and other precious metals are valued based on the average market cost for replacement as published by the American Metals Market during the period of 10 business days immediately preceding the date of loss or damage, or the actual sum you pay for replacement, whichever is less.

Nuclear Hazard

Building, personal property, personal property of employees, or research and development property which suffers direct physical loss or damage caused by or resulting from fire which ensues from nuclear reaction or radiation, or radioactive contamination, is valued on an actual cash value basis, subject to all other exceptions described under Loss Payment Basis Exceptions.

**Personal Property Of
Others, Business
Personal Property You
Lease And Personal
Property Of Employees**

Personal property of others, business personal property you lease and personal property of employees are valued on the same basis as **personal property**, subject to all other exceptions described under Loss Payment Basis Exceptions, but we will not pay more than the amount for which you are contractually liable.

Labor, materials and services that you furnish or arrange on **personal property of others, business personal property you lease and personal property of employees** are valued based on the actual cost of the labor, materials and services.

**Research And
Development Property**

If lost or damaged **research and development property**:

- cannot be repaired, replaced, or reproduced; or
- is not replaced or reproduced,

no payment will be made under this insurance.

**Research And
Development Property
Of Others**

Research and development property not owned by you is valued on the same basis as your **research and development property**, subject to all other exceptions described under Loss Payment Basis Exceptions, but we will not pay more than the amount for which you are contractually liable.

Stock In Process

Stock in process is valued based on the cost of raw materials and costs expended as of the date of loss or damage.

**Undamaged Tenant's
Improvements And
Betterments**

Undamaged **tenant's improvements and betterments** are valued based on:

- the cost to replace undamaged **tenant's improvements and betterments** at the time of loss or damage at another site if you commence replacement within 24 months following the termination of your lease; or
- the **unamortized** portion of their original cost to you if you do not replace undamaged **tenant's improvements and betterments**.

**Loss Payment
Limitations****Electronic Data**

We will not pay for any loss or damage to **electronic data**, unless such loss or damage is caused by or results from:

- aircraft;
- explosion;
- falling objects;
- fire;
- freezing;
- leakage from fire protection equipment;
- lightning;
- riot or civil commotion;
- **sinkhole collapse**;
- smoke;
- vehicles;
- weight of snow; or
- windstorm or hail.

Loss Of Market

We will not pay for any loss or damage that results from loss of market, loss of use or delay.

Prototypes

When production of a new product begins, coverage under this contract ceases for:

- the **prototype** of that product; and
- the research project directly associated with the new product.

**Tenant's Improvements
And Betterments**

We will not pay for that part of any lost or damaged **tenant's improvements and betterments** which is paid by others.

**Suspension, Lapse Or
Cancellation Of Any
License**

Leasehold Interest insurance does not apply to loss caused by or resulting from the suspension, lapse or cancellation of any license.

Conditions (Including Coverage Territory)

The conditions applicable to this contract are contained in the Property/Business Income Conditions And Definitions form included in this policy. Any additional conditions are shown in the Additional Conditions section of this contract.

Additional Condition**Building Or Personal Property Coinsurance**

Coinurance applies to **building or personal property** only when a coinsurance percentage under Building or Personal Property is shown in the Declarations.

Coinurance does not apply to:

- **personal property or building components while in transit;**
- **building or personal property** at any premises not shown in the Declarations; or
- any covered loss of \$100,000 or less.

If coinsurance applies, our maximum loss payment will be determined as follows:

- A. determine the value of the covered **building or personal property** at the time of loss or damage in accordance with the applicable Loss Payment Basis as provided under Loss Payment Basis;
- B. multiply the value determined in step A. by the applicable coinsurance percentage shown in the Declarations;
- C. divide the applicable Limit Of Insurance for Building or Personal Property shown in the Declarations by the amount determined in step B.;
- D. multiply the total amount of the covered loss or damage, before the application of any deductible, by the percentage determined in step C.; and
- E. subtract the deductible from the amount determined in step D.

The amount determined in step E. is the most we will pay for loss or damage, not to exceed the applicable Limit Of Insurance for Building or Personal Property shown in the Declarations.

If coinsurance applies and the **building or personal property** is valued on a replacement cost basis and if you do not repair or replace the **building or personal property**, we will pay you the lesser of:

- the actual cash value of the lost or damaged **building or personal property**; or
- the replacement cost of the lost or damaged **building or personal property** after application of coinsurance.

If you commence the repair or replacement of the lost or damaged **building or personal property** within 24 months from the date of the loss or damage, and if the payment made above was on an actual cash value basis, then we will pay the difference between the previous payment and the lesser of the replacement cost of the lost or damaged **building or personal property** at the time of:

- loss or damage; or
- actual replacement,

after the application of coinsurance.

Additional Condition**Building Or Personal
Property Coinsurance
(continued)**

Coinurance will apply to the total values of all **building** and **personal property** if one Limit Of Insurance for Building or Personal Property applies to:

- more than one **building**;
- **personal property** at more than one premises; or
- **buildings** and **personal property** at one or more premises.

If **personal property** is insured with a separate Limit Of Insurance for **personal property** at each premises, you may elect to have coinsurance applied in either of the following ways at the time of loss or damage:

- at the premises where the loss occurred; or
- based on the total value of all **personal property** at all premises where a Limit Of Insurance for Personal Property is shown in the Declarations.

If the application of coinsurance results in a penalty to you, at the time of loss adjustment, you may change the Loss Payment Basis from a replacement cost basis to an actual cash value basis, if such action will increase your loss payment and reduce the coinsurance penalty.

Definitions

The definitions applicable to this contract are contained in the Property/Business Income Conditions And Definitions form included in this policy.