

**INTERMUNICIPAL AGREEMENT BETWEEN
THE COUNTY OF NASSAU
AND
THE CITY OF LONG BEACH, NEW YORK BOARD OF ASSESSMENT REVIEW
IN RELATION TO PROVIDING REVIEW OF TAX GRIEVANCES**

THIS AGREEMENT (together with the schedules, appendices, attachments and exhibits, if any, this "Agreement") made and entered as of the date on which this Agreement is last executed by the parties hereto, by and between the COUNTY OF NASSAU, a municipal corporation having its principal offices at One West Street, Mineola, New York 11501 (the "County") and the CITY OF LONG BEACH, a municipal corporation having offices at One West Chester Street, Long Beach, New York 11561 (the "Municipality").

WITNESSETH:

WHEREAS, Real Property Tax Law 523-b created the Assessment Review Commission (hereinafter "ARC") to hear tax grievances challenging the assessed valuations for commercial and residential properties located in Nassau County;

WHEREAS, when an employee of ARC elects to file a tax grievance for their own residential and/or commercial property, the ARC, under Real Property Tax Law 523-a, may assign to another municipal taxing authority within the County, the task of reviewing such employee's tax grievance(s) and to make a recommendation(s) to the Commissioners of ARC so that an administrative determination can be issued;

WHEREAS, when employees of Department of Assessment (hereinafter "AS") or the Property Assessment Litigation Bureau of the County Attorney's Office (hereinafter "PALBOCA") elect to file a tax grievance for their own residential and/or commercial property, the County will assign to another municipal taxing authority within the County, the task of reviewing such employee's tax grievance(s) and to make a recommendation(s) to the Commissioners of ARC so that an administrative determination can be issued;

WHEREAS, if determined by the County that certain other employees of the County who elect to grieve their individual residential and/or commercial property should have the review heard by another municipal taxing authority within the County, the County will assign the review to another municipal taxing authority within the County, the task of reviewing such employee's tax grievance(s) and to make a recommendation(s) to the Commissioners of ARC so that an administrative determination can be issued (collectively with ARC, AS and PALBOCA the "County Employees");

WHEREAS, at times, the Municipality may determine that certain employees or elected officials ("Municipal Employees") who elect to grieve their residential and/or commercial property should have that grievance reviewed by another municipal taxing authority within the County;

WHEREAS, the purpose of assigning this limited function to each other's respective

municipal taxing authorities is to avoid any potential or actual conflict of interest;

WHEREAS, the County and the Municipality (collectively, the “Parties”, and individually, a “Party”) are authorized, pursuant to both Article 9, § 1 of the New York State (the “State”) Constitution and Article 5-G of the General Municipal Law to enter into intergovernmental agreements;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereto do agree as follows:

1. Term. This Agreement shall commence on the date on which this Agreement is last executed by the Parties (the “Commencement Date”) and shall terminate when all Parties have fulfilled their respective obligations hereunder, unless this Agreement is sooner terminated in accordance with its terms.

2. Scope of Agreement. The Parties do hereby authorize inter-municipal cooperation with respect to providing the following services, duties and functions:

- a) Municipality Board of Assessment Review will review County Employees’ tax grievance(s) for residential properties for tax year 2021/22 and commercial properties for all unresolved tax years, including 2021/22.
- b) Municipality Board of Assessment Review will make a recommendation(s) to the Commissioners of ARC so that determinations and offers of reduction may be issued for the 2021/22 tax grievance and commercial tax grievances for years at issue.
- c) Municipality Assessor will represent the County of Nassau and defend at Small Claims Assessment Review (hereinafter “SCAR”) hearings any SCAR filing for tax year 2021/2022. Municipal Assessor will assist in the prosecution of Article 7 proceedings for assigned commercial matters.
- d) ARC will review residential and commercial tax grievances by Municipal Employees against the Municipality and render recommendations to the Municipality Board of Assessment Review for tax year 2021/2022 and issue determinations. If SCAR proceedings are filed for any of these residential properties for tax year 2021/22, AS and PALBOCA and AS, will represent and defend the Municipality at the SCAR hearings.
- e) ARC will review Municipal Employees’ commercial tax grievances as well and render recommendations to Municipality Board of Assessment Review who will then issue determinations in accordance with applicable law.

3. Compensation for Services. It is agreed that compensation for the services provided for and set forth below shall be received by either of the Parties, as they perform

applicable services under this Agreement.

- a) Parties shall receive \$95 per residential tax grievance; this rate of compensation shall be inclusive of all services necessary to represent the County in employee conflict case(s) from administrative grievance to SCAR Hearing; it shall include: analyzing and making determinations of market value, issuing determinations, negotiating and settling residential grievances, attending SCAR hearings.
- b) Parties shall receive \$250 per hour with a maximum of 30 hours for review and analysis of each commercial tax grievance and/or Article 7 proceeding. In addition, the Parties shall receive \$250 per hour with a maximum of 25 hours to conference each commercial grievance and/or Article 7 proceeding.
- c) Payment for Municipality's services shall be made in arrears upon the submission of a claim voucher in a form satisfactory to the County that states with reasonable specificity the services provided and the payment requested as consideration for such services. For residential tax grievances, the Municipality must submit such claim voucher to the County within thirty (30) calendar days of completion of the Municipality's work-up on each such grievance. For commercial tax grievances, the Municipality must submit such claim voucher to the County within thirty (30) calendar days of the Municipality's work-up on each such grievance and within thirty (30) calendar days of the Municipality's completion of the conferencing of each such grievance (*i.e.*, grievance settled or reaches impasse and proceeds to litigation). Failure to timely submit vouchers will result in delayed payment. Additionally, the Municipality shall be reimbursed for reasonable and customary business activities and expenses deemed integral to the Municipality's engagement, provided that such activities and expenses are done with the prior written approval of the County and subject to compliance with the County's bill paying procedures.
- d) The County shall have no liability under this Agreement (including any extension or other modification of this agreement) to any Person (as defined herein) beyond funds appropriated or otherwise lawfully available for this agreement. The County shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless all governmental approvals have been obtained.
- e) Payment for County's services shall be made in arrears upon the submission of a claim voucher in a form satisfactory to the Municipality that states with reasonable specificity the services provided and the payment requested as consideration for such services. For residential tax grievances, the County must submit such claim voucher to the Municipality within thirty (30) calendar days of completion of the County's work-up on each such grievance. For commercial tax grievances, the County must submit such claim voucher to the Municipality within thirty (30) calendar days of the County's work-up on each such grievance and within thirty (30) calendar days of the County's completion of the

conferencing of each such grievance (*i.e.*, grievance settled or reaches impasse and proceeds to litigation). Failure to timely submit vouchers will result in delayed payment. Additionally, the County shall be reimbursed for reasonable and customary business activities and expenses deemed integral to the County's engagement, provided that such activities and expenses are done with the prior written approval of the Municipality and subject to compliance with the Municipality's bill paying procedures.

- f) The Municipality shall have no liability under this Agreement (including any extension or other modification of this agreement) to any Person (as defined herein) beyond funds appropriated or otherwise lawfully available for this agreement. The Municipality shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless all governmental approvals have been obtained.

4. Definition of an Employee with a Conflict.

- a) As it relates to the County, an Employee with a conflict includes any County employee or officer that works for ARC, AS and/or PALBOCA or that Employee's spouse, domestic partner, minor children and dependents.
- b) As it relates to the Municipality, an Employee with a conflict includes a Municipality employee of the Municipality's Assessor's office, or elected official, or that Employee or elected official's spouse, domestic partner, minor children and dependents.

5. Indemnification; Defense; Cooperation.

- a) Each Party shall be solely responsible for and shall indemnify and hold harmless the other Party, and their respective officers, employees, and agents (the "Indemnified Party") from and against any and all liabilities, losses, costs, expenses (including, without limitation, attorneys' fees and disbursements) and damages ("Losses"), directly arising out of the negligence or willful misconduct of the indemnifying Party or its respective Agents in its performance of the obligations set forth in this Agreement. However, neither Party shall have a duty to indemnify and/or hold harmless the other Party in instances where one Party rejects the other's recommendation and makes their own determination(s). Notwithstanding the above language, a Party shall have the duty to indemnify and hold harmless the other Party in the event of the Party's negligence, malpractice or willful acts during representation in any legal proceeding undertaken pursuant to this Agreement.
- b) The indemnifying Party shall, upon the appropriate Indemnified Party's demand and at the Indemnified Party's direction, promptly and diligently defend, at the indemnifying Party's own risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against the Indemnified Party for

which the indemnifying Party is responsible under this Section, and, further to the indemnifying Party's indemnification obligations, the indemnifying Party shall pay and satisfy any judgment, decree, loss or settlement in connection therewith.

c) The provisions of this Section shall survive the termination of this Agreement.

6. The Parties are Independent Contractor(s) of One Another. The Municipality is an independent contractor of the County, and the County is an independent contractor of the Municipality.

- a) The Municipality shall not, nor shall any officer, director, employee, servant, agent or independent contractor of the Municipality (a "Municipality Agent"), be (i) deemed a County employee, (ii) commit the County to any obligation, or (iii) hold itself, himself, or herself out as a County employee or Person (as hereinafter defined) with the authority to commit the County to any obligation.
- b) The County shall not, nor shall any officer, director, employee, servant, agent or independent contractor of the County (a "County Agent"), be (i) deemed a Municipality employee, (ii) commit the Municipality to any obligation, or (iii) hold itself, himself, or herself out as a Municipality employee or Person (as hereinafter defined) with the authority to commit the County to any obligation.
- c) As used in this Agreement the word "Person" means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

7. Compliance with Law.

- a) Generally. The Parties shall comply with any and all applicable Federal, State and local Laws (as hereinafter defined), and those laws relating to conflicts of interest, discrimination, and disclosure of information, in connection with its performance under this Agreement. As used in this Agreement the word "Law" includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted.
- b) Records Access. The Parties acknowledge and agree that all records, information, and data acquired in connection with performance or administration of this Agreement ("Information") shall be used and disclosed solely for the purpose of performance and administration of the contract or as required by law. The Parties acknowledge that Information in either Party's possession may be subject to disclosure under Section 87 of the New York State Public Officer's Law. In the event that such a request for disclosure is made, the respective Party shall make reasonable efforts to notify the Parties of such request prior to disclosure of the Information so that the Parties may take such action as it deems appropriate.

- c) Prohibition of Gifts. In accordance with County Executive Order 2-2018, the Municipality shall not offer, give, or agree to give anything of value to any County employee, agent, consultant, construction manager, or other person or firm representing the County (a “County Representative”), including members of a County Representative’s immediate family, in connection with the performance by such County Representative of duties involving transactions with the Municipality on behalf of the County, whether such duties are related to this Agreement or any other County contract or matter. As used herein, “anything of value” shall include, but not be limited to, meals, holiday gifts, holiday baskets, gift cards, tickets to golf outings, tickets to sporting events, currency of any kind, or any other gifts, gratuities, favorable opportunities or preferences. For purposes of this subsection, an immediate family member shall include a spouse, child, parent, or sibling. The Municipality shall include the provisions of this subsection in each subcontract entered into under this Agreement.

- d) Disclosure of Conflicts of Interest. In accordance with County Executive Order 2-2018, the Municipality has disclosed as part of its response to the County’s Business History Form, or other disclosure form(s), any and all instances where the Municipality employs any spouse, child, or parent of a County employee of the agency or department that contracted or procured the goods and/or services described under this Agreement. The Municipality shall have a continuing obligation, as circumstances arise, to update this disclosure throughout the term of this Agreement.

8. Termination.

a) Generally. This Agreement may be terminated (i) for “Cause (as hereinafter defined)” by any Party upon ten (10) days’ written notice to the other Party, stating the reason for termination, (ii) upon mutual written Agreement of the Parties, and (iii) in accordance with any other provisions of this Agreement expressly addressing termination.

b) “Cause” defined. As used in this Agreement the word “Cause” includes: (i) a breach of this Agreement; (ii) the failure to provide parties with determinations necessary to meet the requirements of the RPTL Articles 7 and 7 1-A to defend and prosecute tax certiorari proceeding and also the requirement of RPTL §523-b of the RPTL.

9. Accounting. The Parties shall maintain and retain, for a period of six (6) years following the expiration or earlier termination of the Agreement, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually (“Records”), pertinent to performance under this Agreement. Records shall be maintained in accordance with Generally Accepted Accounting Principles. Such Records shall always be available for audit and inspection by the County Comptroller, the City Comptroller, the City Clerk, and any other governmental authority with jurisdiction over this Agreement,

and any of their duly designated representatives. The provisions of this Section shall survive the termination of this Agreement.

10. Consent to Jurisdiction and Venue; Governing Law; Jury Trial Waiver. Unless otherwise specified in this Agreement or required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court in Nassau County in the State, and the Parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of the State of New York, without regard to the conflict of laws provisions thereof. The Parties hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

11. Notices. Any notice, request, demand or other communication required to be given or made in connection with this Agreement shall be (a) in writing, (b) delivered or sent (i) by hand delivery, evidenced by a signed, dated receipt, (ii) postage prepaid via certified mail, return receipt requested, or (iii) overnight delivery via a nationally recognized courier service, (c) such notices shall be deemed given or made (i) on the date the delivery receipt was signed, (ii) three (3) business days after it is mailed or (iii) one (1) business day after it is released to a courier service, as applicable, and (d) (i) if notice is to be made to the County Comptroller, it shall be forwarded to the attention of the Nassau County Comptroller at 240 Old Country Road, Mineola, NY 11501, and (ii) if to a Party or the Parties, to the attention of the persons who executed this Agreement on behalf of the respective Parties at the addresses first above written, or in each case to such other persons or addresses as shall be designated by written notice.

12. All Legal Provisions Deemed Included; Severability; Supremacy; Construction.

- a) Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or referenced in correct form, then: (i) such provision shall be deemed inserted into or referenced by this Agreement for purposes of interpretation and (ii) upon the application of any Party to this Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either Party.
- b) In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- c) Unless the application of this subsection will cause a provision required by Law to be excluded from this Agreement, in the event of an actual conflict between the terms and conditions set forth above the signature page to this Agreement and those contained in any schedule, exhibit, appendix, or attachment to this Agreement, the

terms and conditions set forth above the signature page shall control. To the extent possible, all the terms of this Agreement should be read together as not conflicting.

- d) Each Party has cooperated in the negotiation and preparation of this Agreement, so if any construction is made of the Agreement it shall not be construed against any Party as drafter.

13. Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

14. Entire Agreement. This Agreement represents the full and entire understanding and accord between the Parties with regard to the subject matter hereof and supersedes all prior agreements (whether written or oral) of the Parties relating to the subject matter of this Agreement.

15. Successors and Assigns. The covenants and agreements herein contained shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

16. No Arrears or Default. No Party is in arrears to any other Party to this Agreement upon any debt or contract and no Party is in default as surety, contractor, or otherwise upon any obligation to another Party, including any obligation to pay taxes to, or perform services for or on behalf of, another Party.

17. Assignment; Amendment; Waiver; Subcontracting. This Agreement and the rights and obligations hereunder may not be in whole or part assigned, transferred or disposed of, amended, waived, or subcontracted, without the prior written consent of the Nassau County Executive or his or her duly-designated deputy (the "County Executive") and the City Manager of the Municipality with the authorization of the City Council of the Municipality, as may be necessary. Any purported assignment, other disposal or modification without all such prior written consents shall be null and void. The failure of any Party to assert any of its rights under this Agreement, including the right to demand strict performance, shall not constitute a waiver of such rights.

18. Third Party Claims. Nothing in this Agreement shall create or give to third parties any claim or right of action against any Party beyond such as may legally exist irrespective of this Agreement.

19. Executory Clause. Notwithstanding any other provision of this Agreement:

- a) Approval and Execution. No Party shall have any liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all approvals have been obtained, including, if required, approval by the

County Legislature and the City Council and (ii) this Agreement has been executed by the County Executive and the City Manager.

- b) Availability of Funds. No Party shall have any liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated or otherwise lawfully available for this Agreement, and, if any portion of the funds for this Agreement are from the state and/or federal governments, then beyond funds available to the Parties from the state and/or federal governments.

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IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date this Agreement is last executed by the Parties.

COUNTY OF NASSAU

By: Helena Williams
Name: Helena Williams
Title: CDC LE
Date: 10/26/20

CITY OF LONG BEACH

By: Donna M. Gaiden
Name: DONNA M. GAIDEN
Title: CITY MANAGER
Date: OCTOBER 23, 2020
Reso: #48/20 (CLB)
56-2020 (COUNTY)

County of Nassau's Acknowledgement:

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

On the 26 day of October in the year 2020 before me personally came Helmut Khan, to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of Nassau; that he or she is CDCE of the County of Nassau, the municipal corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto pursuant to Section 205 of the County Government Law of Nassau County.



NOTARY PUBLIC



Municipality's Acknowledgement

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

On the 23rd day of October, in the year 2020 before me personally came Donna M. Gayden to me personally known, who, being by me duly sworn, did depose and say that she resides in the County of Nassau; that she is the City Manager of the City of Long Beach, the municipal corporation described herein and which executed the above instrument and that she signed her name in accordance with New York State Law and pursuant to Article 3, Section 20 of the Charter and Code of Ordinances of the City of Long Beach.



NOTARY PUBLIC



CALENDAR
for
REGULAR MEETING OF THE COUNCIL
of the
CITY OF LONG BEACH
held
JUNE 16, 2020

- | | | |
|-------------|----|---|
| RES. #46/20 | 1. | Resolution Designating a Responsible Local Official for the City's Edwards Boulevard Project. |
| RES. #47/20 | 2. | Resolution Adopting a Comprehensive Solid Waste Management Plan for the City of Long Beach. |
| RES. #48/20 | 3. | Resolution Authorizing the City Manager to Enter into an Inter-Municipal Agreement with the County of Nassau for the Providing of the Review of Tax Grievances for the 2021/22 Tax Year and a Budget Amendment. |

RESOLUTION NO. 56 - 2020

A RESOLUTION AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE AN INTER-MUNICIPAL AGREEMENT WITH THE CITY OF LONG BEACH FOR THE RELATION TO ASSISTING THE COUNTY IN REPRESENTATION, RECOMMENDATION AND DEFENSE OF ASSESSMENT CHALLENGES BROUGHT BY MUNICIPAL EMPLOYEES OF THE COUNTY AND/OR THE CITY OF LONG BEACH.

APPROVED AS TO FORM



Dennis F. McDermott
Deputy County Attorney

Passed by Nassau County Legislature on
8/13/2020 A voice vote was taken with 19
Legislators present.
Voting: aye 19, nay 0, abstained 0, recused 0
Became a resolution on 8/15/2020
With the approval of the Deputy County
Executive acting for the County Executive

WHEREAS, the County of Nassau (the "County") and the City of Long Beach (the "City") are authorized, pursuant to Article 5-G of the General Municipal Law to enter into inter-governmental agreements; and

WHEREAS, it is in the best interests of the County and City in cooperating in the review of certain tax grievance claims of the other municipality's in certain situations; and

WHEREAS, the County and the City believe it to be in the best interest of the taxpayers of their respective municipalities to authorize inter-municipal cooperation with respect to the mutual covenants set forth in the proposed inter-municipal agreement, a copy of which is on file with the Clerk of the Legislature; now, therefore, be it

RESOLVED, that the Nassau County Legislature authorizes the County Executive to execute the said inter-municipal agreement with the City, and to execute any additional documents in furtherance of such inter-municipal agreement, all in relation to the aforesaid Project; and be it further

RESOLVED that pursuant to the provisions of the State Environmental Quality Review Act ("SEQRA"), 8 N.Y.E.C.L. section 0101 *et seq.* and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and Section 1611 of the County Government Law of Nassau County said Project is a "Type II Action" within the meaning of Section 617.5(c) of 6 N.Y.C.R.R., and, accordingly, is of a class of actions which do not have a significant effect on the environment and no further review is required.

APPROVED

Alena Hill

County Executive

Date *Aug 5, 2020*