

This Addendum Agreement (“Addendum”) dated June 15, 2021 is made by and between the City of Long Beach, a municipal corporation of the State of New York, with an address at 1 West Chester Street, Long Beach, NY 11561 (the “City”), the Long Beach Volunteer Fire Department, Inc., a domestic not-for-profit corporation within New York State, the membership of which comprises the volunteer contingent of the City’s Fire Department, with an address at P.O. Box 53, Long Beach, New York 11561 (the “LBVFD”), and the East End Atlantic Beach Fire District, a fire protection district, with its office at 179 Scott Drive, Atlantic Beach, New York 11509 (“EAB”).

Recitals

- A. The City and EAB are parties to a Firefighting and Fire Protection Services Agreement, dated October 16, 2020 (“EAB Services Agreement”), authorized by City Council Resolution #86/20.
- B. The City’s Fire Department, including the LBVFD, provide the City’s firefighting and fire protection obligations under the EAB Services Agreement.
- C. General Municipal Law § 209-D provides that municipalities which utilize the services of a volunteer fire company/department to provide fire protection and emergency services outside of the municipality requires the consent of the volunteer company, and in consideration of such consent, the municipality can provide a portion of the monies from that contract to the volunteer company.
- D. For decades, the City has provided a portion of the money from such contracts to the LBVFD in accordance with General Municipal Law §209-D, but has not included it within the written terms of the agreements themselves.
- E. The City wishes to provide a portion of the monies from the EAB Services Agreement to the LBVFD.
- F. The City has discussed this portion with EAB and they have consented to the terms of this Addendum.

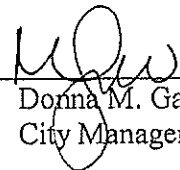
THEREFORE, the parties agree to add the following to the EAB Services Agreement as follows:

- 1. The foregoing preamble and recitals set forth above are hereby incorporated into and made a part of this Addendum.
- 2. This Addendum shall be incorporated into the EAB Services Agreement.
- 3. This Addendum shall be effective as of the date of the EAB Services Agreement.
- 4. The LBVFD hereby consents to the EAB Services Agreement.

5. In consideration for such consent, the City agrees to provide the LBVFD with 24% of the annual proceeds from the EAB Services Agreement. The LBVFD shall invoice the City in April and October of every year the EAB Services Agreement is effective, and the City shall remit payment to the LBVFD within 30 calendar days from the date the invoice is received.
6. The LBVFD understands and agrees that the City shall have no obligation to remit any payment under this Addendum unless and until EAB has paid the corresponding amount due to the City in accordance with the EAB Services Agreement.
7. The parties represent and warrant that they have the full right, power and authority to enter into this Addendum.

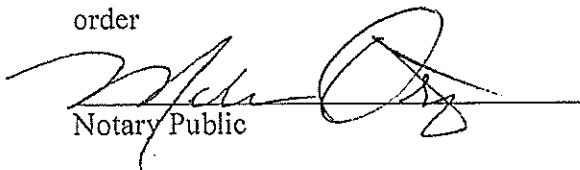
IN WITNESS WHEREOF, the City by its City Manager, and the District by its legally authorized Representative, and the LBVFD by its legally authorized representative, have hereunto set their hands and respective seals, the day and year first above mentioned.

CITY OF LONG BEACH

By:  Date: 9/10/2021
 Donna M. Gayden
 City Manager

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

On this 10th day of September, 2021, before me, the subscriber, personally appeared Donna M. Gayden who, being by me duly sworn, deposes and says: That she is the City Manager of the City of Long Beach (the "City"), a municipal subdivision of the State of New York named in and which executed the above and within Instrument; that she knows the seal of said City and that the seal affixed to said Instrument is the seal of the City (as applicable); that it was so affixed by the order of the City Council of the City, and that she signed her name thereto by like order


 Notary Public

MELISSA ORTIZ
 Notary Public, State of New York
 No. 01OR5077631
 Qualified in Nassau County
 Commission Expires May 12, 2023

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EAST ATLANTIC BEACH FIRE DISTRICT

By: [Signature] Date: 8/3/21
Name: David Finkelstein
Title: COMMANDER

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

On this 3 day of August, 2021, before me personally came David Finkelstein, to me known and known to me to be the person described in and who executed the foregoing Instrument and he acknowledged to me that he executed the same.

[Signature]
Notary Public

THE LONG BEACH VOLUNTEER
FIRE DEPARTMENT, INC.

Emily Siniscalchi
Notary Public, State of New York
No. 30 01SI5085626
Qualified in Nassau County
Commission Expires September 29, 2021

By: [Signature] Date: 8-6-21
Name: James H. Jacob
Title: Chief

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

On this 6th day of August, 2021, before me personally came James H. Jacob, to me known and known to me to be the person described in and who executed the foregoing Instrument and he acknowledged to me that he executed the same.

[Signature]
Notary Public

Authorizing Resolution Detail:

86/20

MELISSA ORTIZ
Notary Public, State of New York
No. 01OR5077631
Qualified in Nassau County
Commission Expires May 12, 2023

Intermunicipal Agreement For Firefighting and Fire Protection Services Between the City of Long Beach, New York and the East End Atlantic Beach Fire District, Atlantic Beach, New York.

THIS FIREFIGHTING AND FIRE PROTECTION SERVICES AGREEMENT ("Agreement") made this 11th day of October 2020, between the City of Long Beach, a municipal corporation of the State of New York with a principal place of business at 1 West Chester Street, Long Beach, Nassau County, State of New York 11561 ("City"), and the East End Atlantic Beach Fire District, a fire protection district, having its office at 179 Scott Drive, Atlantic Beach, County of Nassau, State of New York 11509 ("District"). In this Agreement, the District and the City shall sometimes be referred to individually as "Party" and collectively as "Parties".

Recitals

1. The City has heretofore rendered firefighting and fire protection services to the District by previous agreement(s) properly authorized by the Parties.
2. The District wishes to continue those firefighting and fire protection services.
3. The previous agreement for those services expired at the end of the 2019 calendar year.
4. The District and the City are authorized, pursuant to Article 5-G of the General Municipal Law to enter into intermunicipal agreements;
5. The Parties have engaged in extensive negotiation for the terms of this Agreement.

ACCORDINGLY, the Parties agree as follows:

Article I: Recitals, Location, and Services

1. The foregoing preambles and all other recitals set forth above are hereby incorporated into and made a part of this Agreement.
2. Pursuant to, and in accordance with, Article 5-G of the General Municipal Law, and other applicable provisions of law, the District does hereby engage the City to furnish fire protection and emergency medical service to the District, and the City agrees to furnish such fire protection and emergency medical service to the District. The City will answer all fire calls, alarms and requests for emergency medical services and will send such apparatus and fire department personnel that are available and which are necessary to render any aid or extinguish any fire or fires which may occur within the District.
3. The City shall render to the District the aforementioned services at all times during the day and night for the protection against medical emergencies, fires or conflagrations, the lives and property within the District, which is bounded and described as follows:
 - 3.1. "BEGINNING at a point where the easterly line of the East End Atlantic Beach Fire District meets the mean high water mark of the Atlantic Ocean; running thence westerly 2,900 feet more or less along said mean high water mark to the easterly line of Lot 4 of block 144-1, Section 58 as shown on the Nassau County Tax map; running thence northerly 700 feet more or less along the easterly line of said Lot 4 to the southerly line of Beech Street; running thence westerly 657.08 feet along the southerly line of Beech Street to the southerly prolongation of the easterly line of property as shown on map of Inlet Estates, filed in the Office of the Clerk of Nassau County May 28, 1948, under number 4540; running thence northerly 775 feet more or less along said prolongation and the easterly line of property shown on said map to Reynolds Channel, the last three courses being along the Boundary of the West End Atlantic Beach Fire District; running thence easterly 3,500 feet more or less along Reynolds Channel to the easterly line of the East End Atlantic Beach Fire District; running thence southerly along the easterly line of the East End Atlantic Beach Fire District to the Atlantic Ocean, the point or place of BEGINNING."
4. The District hereby authorizes the City's Fire Department to use any and all fire hydrants within the District for the purpose of carrying out the services of this Agreement.

Article II: Term, Payment and Consideration

1. The term of this Agreement shall be as follows:
 - 1.1. Three (3) years commencing January 1, 2020 up to and including December 31, 2022.
 - 1.2. The District may renew this Agreement for up to two (2) additional three (3) year terms, provided that the District notifies the City in writing of its intent to renew no later than the first Monday of October in the year that a given three (3) year term is ending.
2. In exchange for the services provided in Article I of this Agreement, the District shall pay the City as follows:
 - 2.1. \$106,239.37 for the first year of the contract (*i.e.*, 2020 Calendar Year), to be paid in equal semi-annual installments with the first installment due within thirty days (30) of the effective date of this Agreement and the second installment due on the first day of November.
 - 2.2. Thereafter, the District shall pay the City in equal semi-annual installments due on the first days of March and September with a one percent (1%) increase for each subsequent year. The schedule of fees beyond the 2020 calendar year are as follows:
 - 2.2.1. \$107,301.76 total for the 2021 Calendar Year
 - 2.2.2. \$108,374.77 total for the 2022 Calendar Year
 - 2.2.3. \$109,458.51 total for the 2023 Calendar Year
 - 2.2.4. \$110,553.09 total for the 2024 Calendar Year
 - 2.2.5. \$111,658.62 total for the 2025 Calendar Year
 - 2.2.6. \$112,775.20 total for the 2026 Calendar Year
 - 2.2.7. \$113,902.95 total for the 2027 Calendar Year
 - 2.2.8. \$115,041.97 total for the 2028 Calendar Year

TOTAL OF ALL 9 PAYMENTS = \$995,306.24

Notwithstanding the above, the City of Long Beach will accept 9 equal yearly payments in the amount of \$110,589.59 for the duration of this Agreement. This would result in the City receiving the exact same total amount \$995,306.24 but would result in a simplified accounting process for the District whereby all quarterly payments would be the same amount during the 9 years, namely **\$27,647.40** paid quarterly. With the exception of the first year of this Agreement, the District understands and agrees that said installments of \$27,647.40 shall be due quarterly.

3. **Late Payment.** If a payment is not received when due under this Agreement the City shall send the District a late payment notice. If the City receives no payment within 30 calendar days of date indicated on the late payment notice, then the District shall pay a late penalty of 1.5% of the amount due in addition to the quarterly amount past due.

Article III: Termination; Force Majeure

1. Upon ninety (90) days' notice, the District may terminate this Agreement. Thereafter, the Agreement shall terminate at the end of the ninety (90) day period and the District shall pay to the City a prorated amount representing the portion of the fee allocated to the time of service up to the date of termination.
2. The City may terminate this Agreement upon one hundred and twenty (120) days' notice, provided that the reason for such termination is the City's inability to perform the services to the District set forth in Article I of this Agreement. Thereafter, the District shall pay to the City a prorated amount representing the portion of the fee allocated to the time of service up to the date of termination.
3. A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, acts and threatened acts of terrorism, labor strikes, explosions, actions of the elements, floods, pandemics, equipment failure or

damage reasonably beyond the control of its owner, or other similar events beyond the control of either Party which makes performance of this Agreement, even with the exercise of reasonable diligence, inadvisable, impracticable, illegal, or impossible. The City shall provide the District with written notice of any force majeure occurrence as soon as practicable. Neither Party shall be liable to the other for any delay in or failure of performance under the Agreement due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages.

Article IV: Limitation of Liability; Defense; Indemnification

1. Limitation of Liability. Under no Circumstances shall one party to this Agreement be liable to the other party for any special, consequential, indirect, or incidental damages, including lost profits, arising out of or in connection with this Agreement, or any activities performed in connection with this Agreement, regardless of whether a claim made by that party is based on contract or tort.
2. Notwithstanding any other general or special law of the State of New York, any loss or damage whatever, sustained to the fire apparatus, ambulance or other equipment of the City, while answering, attending upon or returning from a call as provided for herein, shall be borne by the City, unless such damage or loss is the result of the willful acts or omissions of the District.
3. The City agrees to defend, indemnify and save harmless (to the extent of the City's insurance coverage) the District, its officers and employees from any and all suits, actions or causes of action of every name and description brought against the District and/or its officers, agents and employees for or on account of any injuries or damages received, sustained, or alleged by any person or persons arising out of or connected with any of the activities or services, to which this contract relates, except those suits, actions or causes of action which arise as a result of the negligence or intentional acts or actions by the District, its officers and/or employees.

Article V: Best Efforts

1. The Parties agree to undertake their best efforts, including all steps and efforts contemplated by this Agreement, and any other steps and efforts that may become necessary by order of a court or otherwise, to effectuate this Agreement.

Article VI: Representations and Warranties

1. **The District represents and warrants** that it has the full right, power, and authority to enter into this Agreement.
2. **The City represents and warrants** that it has the full right, power, and authority to enter into this Agreement.

Article VII: Covenants; Conditions

1. Prior to the execution of this Agreement, the District shall supply to the City of Long Beach or do the following:
 - 1.1. submit an up-to-date hydrant map of East Atlantic Beach;
 - 1.2. install and maintain signs indicating the boundaries of the East End Atlantic Beach Fire District;
 - 1.3. submit a copy of all fire inspections within the District to the City of Long Beach, office of the Fire Commissioner.

Article VIII: Governing Law and Venue

1. This Agreement is to be governed by and construed in accordance with the Laws of the State of New York, without regard to its conflict of law principles.
2. In the event that any Party breaches any provision of this Agreement, the Parties mutually consent to the jurisdiction and venue of the Supreme Court of the State of New York, County of Nassau.

Article IX: Assignment; Amendments; Waiver; Subcontracting

1. 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 District and the City Manager with the authorization of the City Council, 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.

Article X: Successors and Assigns

1. This Agreement binds and benefits the Parties and their respective permitted successors and assigns.

Article XI: All Legal Provisions Deemed Included; Severability; Supremacy; Construction

1. 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.
2. 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.
3. 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.

Article XII: Merger; No Sole Drafter and Headings

1. 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.
2. 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.
3. The titles and headings to the articles and/or sections of this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

Article XIII: Notice

1. All notices pursuant to this Agreement shall be sent by USPS First Class Mail, Return Receipt Requested to:

1.1. If to the City:

City of Long Beach,
1 West Chester Street
Long Beach, NY 11561
Attn: City Manager

1.2. If to the District:

East End Atlantic Beach Fire District
179 Scott Drive
Atlantic Beach, NY 11509
Attn: Commissioner David Finkelstein

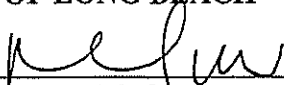
Article XIV: Executory Approval

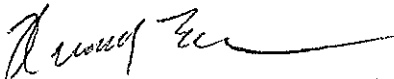
1. Notwithstanding any other provision of this Agreement:
 - 1.1. Approval and Execution. No Party shall have any liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all approvals have been obtained, including, if required, approval by the District and the City Council and (ii) this Agreement has been executed by the District's duly authorized representative and the City Manager.
 - 1.2. 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.

IN WITNESS WHEREOF, the City by its City Manager, and the District by its legal Representative, have hereunto set their hands and respective seals, the day and year first above mentioned.

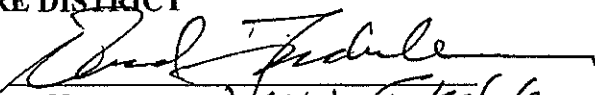
Seal of the City of Long Beach:

CITY OF LONG BEACH

By: 
Donna M. Gayden
City Manager

Attest:
By: 
David Fraser
City Clerk

**EAST END ATLANTIC BEACH
FIRE DISTRICT**

By: 
Name: David Frankelstein
Title/Office: COMMISSIONER
AUTHORIZED SIGNATORY

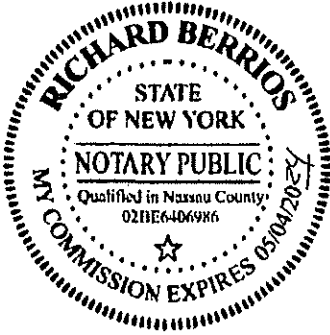
STATE OF NEW YORK :
COUNTY OF [NAME OF COUNTY] : ss.:

On this 16th day of October 2020, before me, the subscriber, personally appeared Donna M. Gayden who, being by me duly sworn, deposes and says: That she is the City Manager of the City of Long Beach (the "City"), a municipal subdivision of the State of New York named in and which executed the above and within Instrument; that she knows the seal of said City and that the seal affixed to said Instrument is the seal of the City; that it was so affixed by the order of the City Council of the City, and that she signed her name thereto by like order;

And on the same day before me personally came and appeared David Fraser, Clerk of the City of Long Beach, who, being by me duly sworn, deposes and says: That he is the Clerk of the City; that he knows the seal of said City and that the seal affixed to said Instrument is the seal of the City; that it was affixed by order of the City Council of the City of Long Beach; that said Donna M. Gayden is the City Manager of said City and that the signature on said Instrument is the signature of said Donna M. Gayden, as City Manager.



Notary Public



Authorizing Resolution Detail: #86/20

October 6, 2020

Item No. 4
Resolution No. 86/20

The following Resolution was moved by Ms. Treston
and seconded by Pres. Bendo :

Resolution Authorizing the City Manager to Renew the
Agreement with the East End Atlantic Beach Fire District.

WHEREAS, for more than seventy years the City of Long Beach has provided to the East End Atlantic Beach Fire District, fire protection and Emergency Medical Services; and

WHEREAS, the City and the East End Atlantic Beach Fire District desire to renew the agreement for said services for an additional three years, commencing January 1, 2020 through December 31, 2022, with an option to renew for up to two (2) additional three (3) year terms upon written notification from the District; and

WHEREAS, the District shall pay a fee of \$106,239.37 for the first year, followed by a one percent (1%) increase for each subsequent year, to be paid in equal quarterly payments of \$27,647.40 over the lifetime of the Agreement; and

WHEREAS, the total amount of payments from the District for the nine (9) year term amounts to \$995,306.24;

NOW, THEREFORE, be it

RESOLVED, by the City Council of the City of Long Beach, New York that the City Manager be and she hereby is authorized to enter into and renew the agreement with the East End Atlantic Beach Fire District for a period of three (3) years, for fire protection and Emergency Medical Services, commencing January 1, 2020 through December 31, 2022, with an option to renew for up to two (2) additional three (3) year terms, for a first year fee of \$106,239.37, followed by a one percent (1%) increase for each subsequent year, to be paid in equal quarterly payments of \$27,647.40 over the lifetime of the Agreement; and be it further

RESOLVED, that said agreement shall contain such other terms, conditions and provisions as the City Manager shall deem proper.

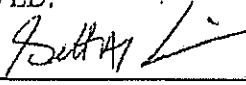
October 6, 2020

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Item No. 4

Resolution No. 86/20

APPROVED:



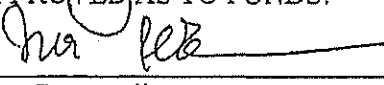
Fire Commissioner

APPROVED AS TO ADMINISTRATION:



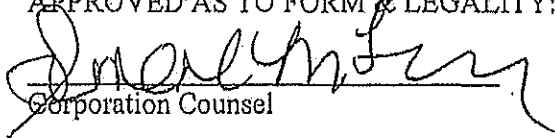
City Manager

APPROVED AS TO FUNDS:



City Comptroller

APPROVED AS TO FORM & LEGALITY:



Corporation Counsel

VOTING:

Council Member Delury - AYE

Council Member Mandel - AYE

Council Member Treston - AYE

Vice President McInnis - AYE

President Bendo - AYE