STATEMENT OF NASSAU COUNTY DISTRICT ATTORNEY
MADELINE SINGAS REGARDING THE INVESTIGATION INTO LONG BEACH PAYOUTS

My office has completed our investigation into payouts for accrued vacation and sick leave time made to certain former employees of the City of Long Beach. As Comptroller DiNapoli’s audit found, these payments were excessive and inconsistent with the applicable law. Our exhaustive investigation found that these payments were the result of shocking ignorance of the Long Beach laws and ordinances, the incompetence and negligence of the officials charged with executing them, and a total abdication of oversight by the prior City Council.

We found that:

- Most City employees told us they were unaware of the existence of the Personnel Code, which sets the limits for separation payouts.
- Officials charged with following and enforcing provisions of the Personnel Code and other codified laws and rules, claimed to have no familiarity with their contents, instead relying on past practices.
- One high-level employee claimed that the Code of Ordinances was merely a set of advisory guidelines and the City was not obligated to abide by it.
- The City’s former Corporation Counsel negotiated his own contract with the City Manager regarding a payout of compensation and a $119,855 draw-down payment, which was not allowed by the City Charter or Code of Ordinances. The contract included an improper confidentiality clause and was not disclosed to the City Council or pursuant to public records requests, until his resignation.
- The City Council showed an inexplicable deference to unelected appointees, even when they acted in open defiance of the Council.
- Audits by the New York State Comptroller in 1992 and 1997 highlighted deficiencies in City policies regarding leave payouts but the City Council took no meaningful action to correct them.
- Several City Councilmembers told investigators that they had no familiarity with the Personnel Code, even after improper payments received widespread attention.

Still, while we found the justifications offered for these payments to be incredible and inconsistent with the plain language of the applicable laws and contracts, we found no evidence
suggesting the leave balances were unearned, nor did we find evidence of the criminal intent necessary to bring criminal charges.

New York law erects an exceptionally high burden to criminally charge public officials with official misconduct, relegating “misconduct [that] was the product of inadvertence, incompetence, blunder, neglect or dereliction of duty, or any other act, no matter how egregious (emphasis added)”\(^1\) to a non-criminal civil or disciplinary forum absent proof beyond reasonable doubt of knowing misconduct or intentional breach of duty.

The Public Corruption Bureau interviewed more than 30 current and former Long Beach employees and reviewed thousands of pages of records. Our investigation was delayed by the refusal of some critical witnesses to cooperate, and questions of privilege relating to certain records.

I strongly endorse Comptroller DiNapoli’s audit recommendations and I am encouraged that the new City Council has appointed an experienced City Manager and proposed structural changes to transfer more authority— and responsibility— to the elected government. Additionally, I commend them for conducting their own internal audit and taking steps to recoup overpayments.

The Council must establish and codify clear policies governing payments for accrued vacation and sick time, and review City operations to identify any other areas where antiquated opinions from former officials or unquestioned longstanding procedures have led to governing and administrative practices inconsistent with laws and ordinances. In addition, it is essential that all employees of the City of Long Beach familiarize themselves with all Charter provisions, ordinances, laws, rules and regulations relating to their work. I also call upon the City of Long Beach to ensure that its Board of Ethics is constituted, active, and prepared to educate employees and officials regarding the Code of Ethics, conflict rules, and disclosure requirements to guard against future abuses and conflicts of interest.

During Mr. Schnirman’s tenure as City Manager, he allowed millions of dollars in improper payments to be made, personally accepted a payment much more generous than provided-for by the plain language of his contract and waited more than a year to return that payout while under state and federal investigation. The taxpayers of Long Beach deserved better.

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\(^1\) *People v. Feerick*, 93 N.Y.2d 443 (1999)
September 30, 2020

The City of Long Beach
City Hall
1 West Chester Street
Long Beach, NY 11561

Re: Investigation of Separation & Accrued Leave Payouts

Dear City Manager Gayden & Members of the City Council:

I am writing to apprise you of the results of an investigation that was prompted by allegations of improper separation payouts to City of Long Beach employees. Though we are not bringing criminal charges because we cannot prove all the elements of applicable criminal statutes or that the payouts were not merely the result of extreme negligence and incompetence, we concur with the findings of the New York State Comptroller’s audit that the payments were improper and strongly endorse significant reforms to the City Charter and Code of Ordinances. More active Council oversight is also essential to prevent the abuse of taxpayer funds.

As a threshold matter, is important to note the high evidentiary burden required to sustain a prosecution against a public official for official misconduct under New York law. In People v. Feerick,¹ the New York Court of Appeals held:

“Proof that a public servant intended to receive a benefit along with proof that he or she also knew the acts were ‘unauthorized’ negates the possibility that the misconduct was the product of inadvertence, incompetence, blunder, neglect or dereliction of duty, or any other act, no matter how egregious, that might more properly be considered in a disciplinary rather than a criminal forum.”²

Our investigation found rampant, longstanding, egregious incompetence by many public officials within the Long Beach government, and an unconscionable ignorance of the law and abdication of oversight on the part of the Long Beach City Council. In this context, while it is clear that high-ranking officials should have known the law and their ethical obligations and scrupulously followed them, we could not establish with proof beyond reasonable doubt that they knew the draw-down and separation payments were improper and that the benefits they received were unauthorized, or that they knowingly failed to perform a required duty.

¹ 93 N.Y.2d 433 (1999).
² Id. at 448.
The District Attorney’s Office began an investigation into the allegations immediately after claims of irregularities in separation payments were made at an April 17, 2018 City Council meeting. In the days and weeks that followed, Long Beach residents wrote, called, and emailed to report their concerns that these separation payouts violated the City’s Code of Ordinances.

The complaints alleged the following:

- Several employees, including Executive level employees, had received payouts of their accumulated vacation and sick leave accruals, but did not actually separate from City employment and remained in their current positions.
- Employees received payouts for more than 50 accumulated vacation days, despite being limited to 50 days by the City’s Personnel Code.
- “Exempt Employees” received payments for 100% of their accumulated sick days, despite a limit in the Personnel Code of 30%.
- Former City Manager Jack Schnirman received a separation payout exceeding the terms in his employment contract with the City.
- Former Commissioner of Public Works James LaCarrubba received an excessive separation payout upon resigning his Commissioner position, yet remained employed by Long Beach in a part-time capacity. Several months later he returned to a full-time role with Long Beach for a very brief period. Upon his second resignation, he received another excessive payout, which credited him as if he had been employed full-time continuously since resigning from his position as Commissioner of Public Works.

Our Investigation

At the initiation of the investigation, we partnered with the Office of State Comptroller (OSC), with OSC conducting audits of the City’s overall financial condition and the practices regarding separation payouts, and our Public Corruption Bureau conducting a criminal investigation of the separation payouts. Because we have criminal and not broad policymaking jurisdiction or fiscal oversight authority, our investigation was narrower in scope than OSC’s audit and focused only on subject matters that could have had the potential to result in criminal charges against specific individuals. We did not focus on the wisdom or managerial competence of the City’s administration. We did not uncover evidence regarding issues with any specific person’s time records therefore we did not attempt to determine whether the vacation/sick leave accruals of City of Long Beach employee were accurately recorded by the City or if employees actually worked the hours they claimed on their time sheets.

The Public Corruption Bureau opened an investigation into this matter on April 20, 2018 and determined that this case would benefit from the expertise of Office of the State Comptroller, which had familiarity with the financial practices of the City of Long Beach from its prior audits and engagement. Working in full partnership with OSC throughout our review, the Comptroller’s team assisted in many of our interviews and provided valuable historical information about the financial situation of the City of Long Beach. As we investigated these allegations, our Public Corruption Bureau prosecutors and investigators reviewed and analyzed relevant legal precedents, conducted witness interviews, and issued numerous grand jury subpoenas for records. Information obtained through
witness interviews and subpoenaed documents led to interviews of additional witnesses, witness re-
interviews, and the issuance of additional subpoenas for documents, until all leads were exhausted. Ultimately, the Public Corruption Bureau spoke to 30 witnesses, reviewed thousands of pages of emails and other documents, and spent many hours consulting with OSC attorneys and our Appeals Bureau and Executive Staff on the unique legal issues in this case.

**Evidence and Confidentiality Obligations**

In general, district attorneys have two means of interviewing witnesses – voluntary interviews, with the consent of the witness, and compelled testimony before a grand jury pursuant to a subpoena. Voluntary interviews from cooperative witnesses are crucial and necessary to the development of public corruption cases. As a matter of policy, we will not identify in this letter witnesses who consented to interviews or specific information that they provided so that witnesses are not dissuaded from speaking to us in future investigations.

While it is our policy choice not to identify cooperative witnesses, we are prohibited by law from identifying or discussing information obtained through grand jury subpoenas. Section 190.25(4)(a) of the Criminal Procedure Law specifies that “grand jury proceedings are secret” and that no one may “disclose the nature or substance of any grand jury testimony, evidence, or any decision, result or other matter attending a grand jury proceeding.” Substantial information was gained through the grand jury subpoena process in this case, which significantly affected our analysis, but cannot be disclosed to the public, and such analysis cannot be elaborated upon in this letter.

When witnesses refuse requests for a voluntary interview, prosecutors can compel them to testify before a grand jury. This decision requires careful consideration, particularly in public corruption investigations, because under New York State law, unlike in the federal system, any witness subpoenaed to appear before a grand jury is automatically immunized. Compelled witnesses cannot be prosecuted for any crime related to the subject of the investigation, regardless of what evidence is developed against them. In a scenario in which a prosecutor believes that a witness, who has refused a request for a voluntary interview, likely has important knowledge of a crime, but could also potentially have culpability for that crime, the prosecutor must carefully weigh whether the potential information that witness could provide the grand jury outweighs the risk of immunizing the witness. The risk of immunizing a culpable person has a substantial impact on cases such as this, where there may be several people involved in wrong-doing and the evidence has not clearly established where the culpability lies.

**The Vacation Payouts**

Early in the investigation, we learned that the City had been paying employees their full salary for up to 75 accrued vacation days, in excess of the 50-day limit set forth in the Personnel Code, for nearly two decades. The payments were based on an opinion offered in a legal memorandum by then Corporation Counsel, Joel Asarch. Regardless of whether that reasoning was sound, we concluded that there could be no criminal liability for recent and current Long Beach officials who were operating under a long-standing practice that they had no role in creating and no incentive to change.

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3 Exhibit 1. Mr. Asarch died in 2013. Document provided by the Office of the New York State Comptroller.
The Draw-Down Payouts

Likewise, our investigation found that “draw-down” payments for vacation and sick leave accruals to employees who did not separate from service was a long-standing practice. The investigation found the City had no formal or uniform policy regarding draw-down payouts and its informal policy could vary among its different departments, with some allowing for it if they had funds in their budget or if an employee claimed to have a financial hardship. Draw-down payments had also been allowed for both exempt and union employees. The City Code has no provision authorizing draw-down payments but does not explicitly forbid them either. Given that this was a long-standing practice, upon which others relied, and that there was no explicit statutory prohibition, we concluded that authorizing a draw-down payout could not be the basis for a criminal charge.

The Sick-Leave Payouts

The benefits conferred upon exempt employees were codified in 1997 in the Personnel Code, Section 19 of the City’s Code of Ordinances. For the purposes of the Personnel Code, exempt employees are all full-time City employees not covered by collective bargaining agreements. The portions of the Personnel Code relevant to our sick-leave analysis are the following:

<table>
<thead>
<tr>
<th>Sec. 19-19 Benefits6</th>
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<tr>
<td><strong>A. Sick leave entitlement.</strong> All exempt employees shall accrue sick leave time at the rate of one and one-quarter (1 and 1/4 days) per month. Upon termination of employment, exempt employees shall be entitled to payment in cash for the same number of accumulated sick days at the rate of thirty (30) percent of the total number of days accrued multiplied by the rate of pay at the time of termination.</td>
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<tr>
<td><strong>I. Vacations.</strong> Exempt employees shall be entitled to the same vacations available to civil service employees pursuant to the collective bargaining agreement then in effect. However, no exempt employee shall accrue or carry into the succeeding year more than fifty vacation days unless for good cause shown, the city council shall authorize such increased accrual. Permission to exceed fifty (50) days shall be required for each year the exempt employee seeks to accrue more than fifty (50) vacation days. In no event will an employee be entitled to</td>
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4 While OSC’s audit identifies instances of excess separation payouts to some union employees, our investigation only focused on the propriety of separation payouts to exempt employees, as the executive level/managerial staff are members of the exempt class and could influence policies that benefit them personally, whereas union employees do not have such individual influence, making it highly unlikely that there was a criminal intent in the overpayment of a union employee.

5 While some contend that draw-down payouts are ultimately beneficial to the City because they can reduce the amount the City will eventually pay an employee upon separation (i.e., paying an employee some of their accrued time when they are making a lower salary is cheaper than paying them out later when they are making a higher salary), that is only correct if the reduction in their accrued time doesn’t allow them to repeatedly avoid the limits on accruals (e.g., an employee at the 75 day vacation limit who draws down 20 days and then accrues 20 more days will end up being paid for 95 vacation days over their tenure).

cash equivalent of more than fifty (50) vacation days at the time of his/her termination, resignation, or other leaving from city employment.

Sec. 19-20 Compensation in lieu of vacation, sick leave, and personal days upon termination of employment.

Any exempt employee whose services are terminated for any reason other than cause shall be entitled to cash payment of the monetary value of his/her accumulated and unused vacation time, sick leave, and personal days up to the limits as set forth in this article.

A plain-language reading of these statutes makes it clear that the exempt employees were to be paid no more or less than 30 percent of their accrued sick leave. If the City Council intended that 30 percent was a baseline minimum for sick leave payouts, a phrase such as “at least” would have appeared after “shall be entitled” in Sec 19-19 (A), and there would have been a provision providing for circumstances in which an exempt employee would receive more than 30 percent. A 30 percent limit is further supported by Sec 19-20’s statement that separation payouts are for “unused vacation time, sick leave, and personal days up to the limits as set forth in this article” [emphasis added]. Furthermore, the introduction to the Personnel Code, Sec 19-18, states, “The purpose of this Article is to establish uniform provisions [emphasis added] for vacations and sick leaves and termination benefits.” An interpretation of the Personnel Code that the payout rate for sick leave is variable directly undercuts the stated purpose of the statute to “establish uniform provisions.”

When the controversy over separation payouts arose, the Corporation Counsel’s office publicly defended the excessive sick leave payouts by claiming the Personnel Code distinguishes between how vacation and sick leave accruals can be paid out and that without an explicit prohibition otherwise, the City Manager has the authority to increase the sick leave payout rate. The City claimed that the Personnel Code establishes a maximum payout for vacation and a minimum payout for sick leave.

We acknowledge that the language in Sec. 19-19(I)—Vacations—prohibits the amount of vacation days that may be paid out in a more direct and precise manner than does Sec. 19-19 (A)—Sick Leave Entitlement, and that it is possible that a person could, in good faith, have believed that distinctions in the vacation and sick leave sections allow for a payout of more than 30 percent of sick leave. Because

7 Id.
8 Assistant Corporation Counsel Greg Kalnitsky said that the city’s former Corporation Counsel, the late Joel Asarch, included language in the city’s Code of Ordinances in 1997 to protect exempt employees that “capped” vacation time at 50 days, but “entitled” them to 30 percent of their accrued sick time. ‘That is, that the express ‘entitlement’ of 30 percent was interpreted to mean that exempt employees shall be entitled to no less than 30 percent,’ said Kalnitsky. ‘There was nothing restricting the city manager from providing employees with more than the minimum entitlement than that which was promised by statute.’ In 1997, Asarch also allowed CSEA members and non-union employees to take an additional 25 unused vacation days, according to a memo obtained by the Long Beach Herald. However, the City Code was never updated to reflect the additional vacation time for non-union employees, while the CSEA contract was, Kalnitsky said.” Anthony Rifialto, “City says state comptroller probing Long Beach payouts.” Long Island Herald, 24 May 2018, http://liherald.com/stories/city-says-state-comptroller-probing-long-beach-payouts
9 See Rivers v. Birnbaum, 102 A.D.3d 26, 36 (2d Dept. 2012) (where particular language is included in one section of a statute but is omitted from another section of the same Act, it is generally presumed that the legislative body acted intentionally and purposefully in the disparate inclusion or exclusion); Matter of Town of Eastchester v. New York State Bd. of Real Prop. Services, 23 A.D.3d 484, 485 (2d Dept., 2005) (same); McKinney Cons. Laws of New York, Book 1, Statutes § 240.
of the plain language of the City Code, and the availability of the City Council and current Corporation Counsel to address any perceived ambiguities directly, we find this defense unconvincing. Nonetheless, it affords a legal defense that would be problematic for any hope of a successful prosecution.

The City also claimed that a twenty-year-old memo by former Corporation Counsel Joel Asarch supports this interpretation. The City’s claimed reliance on this memo as a justification for its generous interpretation of the sick leave entitlement is confounding. While this memo addresses how to interpret vacation accrual payouts in the then-existing CSEA contract, it says nothing about the Personnel Code or the sick leave payouts.

A memorandum of a former Corporation Counsel is neither law nor binding policy, and a successor Corporation Counsel could supersede with their own, current, tailored analysis, or more prudently, engage the City Council to authoritatively resolve any question as to statutory construction or interpretation. Inexplicably, we find no evidence any Corporation Counsel did this.

In fact, our investigation uncovered no written documentation to support the contention that the Personnel Code allowed for more than 30% sick leave payouts and no documentation to support the contention that anyone in the administration relied on such an interpretation in authorizing such payouts. We also found no written documentation as to why this financially distressed City would enact such a policy, even if it believed it to be authorized, or any evidence that such a decision to increase an entitlement to exempt employees was ever communicated to the City Council.

Furthermore, throughout our investigation, most City employees told us they were unaware that the Personnel Code existed, and of those who were aware of it, almost all claimed to have no familiarity with its contents. Unfortunately, many City employees and officers we interviewed—including those charged with creating, following, and enforcing them—seemed to be confused or ignorant about various City policies, practices, and rules. One high-level employee bafflingly claimed that the Code of Ordinances was merely a set of advisory guidelines and that the City was not obligated to abide by it.

In February 2012, shortly after Jack Schnirman began his tenure as Long Beach City Manager, the City Council passed Resolution 35-12, which allowed the creation of an Early Retirement/Separation Incentive Program to reduce the City’s payroll. The resolution specified that both union and exempt employees would receive 50% of their accrued sick leave if they left service within 90 days of the passage of the resolution, “with such terms and conditions as may be established” by the City Manager and the CSEA. It is questionable whether the resolution was a legally proper mechanism to create a retirement incentive since it conflicted with the Personnel Code, but it did establish a precedent of the Council abdicating its responsibility to determine the terms of separation payouts. This was a brief and broad resolution that gave wide latitude to the City Manager to execute independently. Although the resolution only specified two firm conditions – 50% of sick leave and a 90-day window, when the retirement incentive was announced to employees, both conditions were disregarded. The incentive offered union and exempt employees 65% of their accrued sick leave and additional terminal leave payments. It also specified a deadline for acceptance, but our investigation showed that the deadline was not enforced. The City offered retirement incentives again in 2014 and 2016, with increased terminal leave terms, but without any further action of the City Council. This

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10 Offering Terminal Leave payments to Exempt employees is prohibited by Sec 19-22 Termination Leave, unless the employee began working for the City before February 25, 1997.
reflects a pattern of the City administration creating City policy that conflicts with the Personnel Code and was not authorized by the Council.

The existence of the 2012 retirement incentive was later used by the City to defend the subsequent 100% sick leave payouts. According to statements made by City officials to OSC, “as a result of a Council-approved retirement/separation incentive in 2012 provided to both CSEA and exempt employees, the City has ‘necessarily’ interpreted the 30 percent sick leave entitlement in the City Code to mean that exempt employees shall be entitled to no less than 30 percent of the total number of sick days accrued, multiplied by the rate of pay at the time of separation.” This explanation is lacking. It seems to acknowledge that the incentive violated the code and therefore the administration had to stretch the meaning of the code to allow for the incentive. We question whether this interpretation even existed prior to the public outcry over the separation payouts, since there is no contemporaneous documentation to show that it was in fact relied upon at the time. Nevertheless, while this explanation is wanting, it is insufficient to establish criminal intent, because those involved in promoting the defense were not involved in changing the policy.

In addition to the hurdle of proving beyond a reasonable doubt that the City’s interpretation of the Personnel Code was wrong and unjustified, we face the insurmountable obstacle of proving that those in authority acted in bad faith, i.e., knew that their interpretation was wrong and that their sole or primary motive was to enrich themselves. We found no such evidence. Simply being wrong or incompetent is not a sufficient basis to pursue a larceny, fraud or other type of corruption charge, which require proof of criminal intent. The City’s implementation of the retirement incentive is an example of this. It was likely enacted improperly and not implemented uniformly, and it wrongly vested authority in the City Manager that belonged to the Council, but there was no evidence of criminal intent.

Beyond the legal issues that preclude prosecution, there are insurmountable evidentiary issues. During this investigation, the Public Corruption Bureau obtained thousands of relevant documents and emails and heard the accounts of all known and available witnesses with relevant information. While this was an exhaustive review, we still lack a reliable narrative explaining what led to the change in policy for exempt employees’ separation payouts:

1. There are no contemporaneous documents or written communications that show when, how or why the sick leave accrual payout policy was changed.
2. The events in question happened years ago, which understandably makes it harder for witnesses to fully recall them.
3. There were irreconcilable conflicts between the accounts of certain witnesses on material issues of fact.
4. Certain witnesses lacked candor in their statements and provided incomplete narratives of events.
Mr. Schnirman's Contract

Former City of Long Beach City Manager Jack Schnirman entered into an employment contract with the City in 2012, which was renewed in 2014 and 2016 by the City Council. The Council is authorized to enter into an employment agreement with a City Manager pursuant to Section 20(3)(a) of the City Charter. Mr. Schnirman’s contract set the terms of his separation pay and used identical language in each of its three iterations. Section 5 of the contract states that upon resignation, Schnirman “shall be entitled to be paid for thirty (30) percent of his accrued but unused sick leave.” While the language appears to be quite clear as to the terms of his leave payout, it is contradicted by Section 11 which states that Schnirman “shall be compensated for all accrued vacation leave, sick leave, personal leave, and other benefits to date in the same manner as all other ‘exempt’ employees.”

A fair reading of the foregoing is that the 30 thirty percent sick leave payout was intended to be a limit. Furthermore, the explicit term as denoted in Section 5 of the contract should be given more authority than the conditional or ambiguous term – “…same manner as…”—that is stated in Section 11. A reading of the 30 percent as a limit also mirrors Section 19 of the Personnel Code. If there was an intention to allow the sick leave payout to be flexible, there should have been language explaining by whom and how a variance from the stated contract terms would be authorized. It is troubling that the City’s practices permitted a situation in which the chief executive had the authority to independently alter the terms of benefits he was personally paid by increasing the benefits paid to all other exempt employees.

Furthermore, our investigation found that not a single City Council member was aware that the payout to Mr. Schnirman was intended to be flexible, including the signatory to the contract, former City Council President Len Torres. Although we conclude that Mr. Schnirman should have been paid 30 percent of his sick leave according to his contract, the internal inconsistency in Mr. Schnirman’s contract precludes criminal charges regarding his payout as we do not believe that it can be proven beyond a reasonable doubt that Section 5 is the controlling language in the contract and that Mr. Schnirman could not have reasonably believed otherwise. We also favorably considered Mr. Schnirman’s voluntary return of the excess portion of his payout to the City upon the release of the OSC Draft Audit Report.

Most significantly, our investigation found no evidence that Mr. Schnirman committed any intentional acts of deception to obtain a payout that exceeded the terms of his contract, and no evidence that he changed the sick leave payout policy to benefit himself. That we have chosen not to file a criminal charge should not be construed as a condoning of this conduct: Mr. Schnirman was inexcusably remiss in not seeking authorization from the City Council to change the sick leave payout policy for exempt employees or, at least, informing the Council of this change. Additionally, Mr. Schnirman failed to inform his subordinates that his contract addressed the terms of his separation payout and failed to ensure his payout was calculated in a manner consistent with his contract.

Mr. Agostisi’s Contract

During the course of the investigation, we learned that Corporation Counsel Robert Agostisi received a large draw-down payment of his vacation and sick leave accruals and that unlike any other

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employee who received a draw-down, Mr. Agostisi’s payment was made pursuant to a written agreement between himself and Mr. Schnirman, who acted on the City’s behalf.\textsuperscript{12}

The City’s Charter and Code of Ordinances do not authorize employment contracts with the Corporation Counsel or any other employee, with the exception of the City Manager.\textsuperscript{13} A reading of \textit{Matter of Hansell v. City of Long Beach}, 61 A.D.2d 84 (2d Dept. 1978), which invalidated an employment contract of a former City Manager, before the Charter had been amended to authorize such a contract, indicates that Mr. Agostisi’s agreement is arguably unlawful. This is disconcerting. More alarming, however, were the terms of the agreement and the efforts taken to conceal it.

While Mr. Schnirman’s own agreement had conflicting and arguably ambiguous provisions about the payout of his sick leave accruals, Mr. Agostisi’s agreement expressly stated that he would receive a 100\% payout of his sick leave. Mr. Agostisi’s agreement also required the City to provide him with a full payout, even if he were to be fired for cause, which conflicts with Sec. 19-20 of the Personnel Code, which reserves the entitlement of separation payouts for exempt employees who “are terminated for any reason other than cause…”\textsuperscript{14} Also concerning about Mr. Agostisi’s agreement is that it contained a confidentiality clause. This confidentiality clause appears to be contrary to the spirit, if not the letter, of New York’s Freedom of Information Law,\textsuperscript{15} which sets forth the transparency obligations of government agencies in our State.\textsuperscript{16} While certain records are exempt from disclosure under FOIL, Mr. Agostisi’s agreement does not fall under any exemption.\textsuperscript{17} Our investigation revealed that Mr. Agostisi intended to keep this agreement secret from other City employees, and even the Council, and he succeeded in doing so up until he resigned on September 24, 2019.\textsuperscript{18}

As the City’s top attorney, Mr. Agostisi’s negotiation of his own contract with Mr. Schnirman, whom he also represented, is quite troubling. He probably should have directed the City to retain outside counsel to review and advise Mr. Schnirman regarding the agreement, especially since such a contract is not expressly authorized by the Charter or City Code, and in fact deviates from the entitlements for exempt employees authorized in the Personnel Code. Nevertheless, despite our strong misgivings regarding the circumstances of how this agreement was negotiated, we do not believe that we have legally sufficient evidence that Mr. Agostisi had a fraudulent or larcenous intent when he counseled Mr. Schnirman to sign the agreement, since this occurred after the City and Mr. Schnirman had already begun giving 100\% of sick leave accruals to exempt employees.

\begin{itemize}
  \item[\textsuperscript{12}] Exhibit 3. Document provided by the Office of the New York State Comptroller.
  \item[\textsuperscript{13}] Long Beach City Charter, Article 3, § 20-3(a).
  \item[\textsuperscript{14}] Our investigation found an instance of an exempt employee terminated for cause, who nevertheless received a full separation payout. We determined that this payout was not borne out of a corrupt motive, but of incompetence and/or ignorance of the Personnel Code.
  \item[\textsuperscript{15}] N.Y. Pub. Off. L. §§ 84-90.
  \item[\textsuperscript{16}] “The people’s right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. \textit{Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality} [emphasis added]. The legislature therefore declares that government is the public’s business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.” N.Y. Pub. Off. L. § 84.
  \item[\textsuperscript{17}] N.Y. Pub. Off. L. §§ 89 and 96.
  \item[\textsuperscript{18}] Mr. Agostisi’s contract was the subject of a Freedom of Information Law request from a Long Beach resident. The City inaccurately responded that it did not have any record responsive to the request, and though the Agostisi agreement should have been provided, it was not.
\end{itemize}
Once we determined that we could not establish a fraud or larceny crime, we considered whether Mr. Agostisi’s failure to advise Mr. Schnirman to seek outside counsel to review the agreement and his failure to publicly disclose the agreement constituted official misconduct under Penal Law § 195.00(2). This would require proving that Mr. Agostisi, “with intent to obtain a benefit...knowingly refrain[ed] from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.” We have determined that a duty to advise Mr. Schnirman to seek outside counsel was not imposed by law, or at least not clearly enough, to satisfy this element. The City Charter’s section delineating the duties of Corporation Counsel does not specifically impose such a duty. While the City’s Code of Ethics does require disclosure of conflicts of interest, it appears that the conflicts contemplated by the statute, in the case of Corporation Counsel such as Mr. Agostisi, at least, would have to relate to matters about which he was actually representing the City. For example, if he were advising the City regarding a contract with a vendor, he would be required to disclose that he had a financial interest in that vendor and that he had represented that vendor on a prior occasion. The Code of Ethics does not appear to cover the negotiation of an employee’s own employment contract, regarding which that employee’s financial interest is self-evident. While it could be argued that the plain language of the Code is broad enough to cover Mr. Agostisi’s agreement, we nevertheless do not believe that the duty is sufficiently defined to enable us to prove a criminal case beyond a reasonable doubt.

As we cannot prove that such a duty was imposed on him by law, we next considered whether the duty was “clearly inherent in the nature of” Mr. Agostisi’s office. In that regard, we reviewed the ethics rules that we as attorneys licensed in New York all must follow: the New York Rules of Professional Conduct. As with the City’s Ethics Code, however, it appears that the conflicts contemplated by the disciplinary rules concern matters about which a lawyer is actually representing a client, and not the lawyer’s own employment contract. In short, while the manner in which Mr. Agostisi’s employment contract was executed is questionable, the evidence uncovered here does not support criminal charges.

**Payouts to James LaCarrubba**

As noted above, legal and ethical confidentiality obligations prevent us from disclosing certain matters relating to our investigation, and these obligations significantly constrain our discussion of our findings as they relate to Mr. LaCarrubba. Our investigation found, once again, practices that betrayed the taxpayers which should never happen in a well-run government; however our investigation has not found sufficient evidence to prove, beyond a reasonable doubt, the requisite criminal intent to sustain any charges stemming from Mr. LaCarrubba’s payouts.

**Conclusion**

Although we have decided not to bring criminal charges in this case for the reasons detailed above, we do believe that corrective action must be taken by the City Council to address the issues raised by our review and the Comptroller’s audits. The recommendations of previous Comptrollers audits of city finances were repeatedly ignored by elected and appointed Long Beach officials over two decades. We agree with the Comptroller’s audit recommendations and hope that our findings are

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19 Long Beach City Charter, Article 3, § 23.
20 Long Beach City Charter, Article 2, § 18(3)(e).
helpful as you work to implement reforms to safeguard taxpayer funds from abuse and mismanagement.

Sincerely,

Christine Maloney
Chief, Public Corruption Bureau
Office of the Nassau County District Attorney
Memo

To: Michael Barlotta, Jr., Comptroller

From: Joel K. Asarch, Corporation Counsel

CC: Bruce Nyman, City Manager; Eugene Cammarato, Director of Operations

Date: 10/12/00

Re: Termination vacation pay

You have asked my opinion concerning whether or not the City may make payment in excess of 50 days for vacation time upon a CSEA employee’s leaving City employment.

Pursuant to the agreement between the City and the CSEA, an employee may accumulate from year to year up to fifty days vacation time (400 hours) [section 8-1.7]. Unless the City Manager has granted an extension, all vacation days beyond the fifty are to be removed from the employee’s bank at the end of the year. Since all employees have been notified of the need to carry only fifty days from year to year, forfeiture of excess days may occur [cf. section 8-1.3]. I recommend that you continue to review all employees’ vacation “banks” and take appropriate steps as of January 1st of each year [section 8-1.7(c)].

Thus, as of 12:01 a.m. on January 1 of any given year, the employee can have 50 vacation days plus up to an additional 25 more days as of that date [Section 8-1.2]. These days are paid in arrears, that is, after the completion of the previous year of employment. Thus, as of January 1st, an employee with eleven years plus of experience may have accrued up to 75 days under the contract. However, the 25 additional days (or less – as the schedule in section 8-1.2 sets forth) must be used before December 31st. Finally, an employee accrues vacation days during the current year in addition to the days carried over and the days added on January 1st. These days may be calculated into the vacation time accrued if the employee dies or leaves City employ during the calendar year.

“Upon termination, an employee shall be paid all accrued vacation pay” [section 8-1.8]. Thus, under the contract, the City must pay in accordance with the foregoing.

Joel Asarch
THIS AGREEMENT, is made and entered into this 16th day of March, 2016, by and between the CITY OF LONG BEACH, 1 West Chester Street, Long Beach, New York, a municipal corporation (hereinafter called “Employer”), and JACK SCHNIRMAN, Long Beach, New York (hereinafter called “Employee”), both of whom understand as follows:

WITNESSETH:

WHEREAS, the Employer desires to employ the services of the Employee as City Manager of the City of Long Beach, as provided by Section 20 of the Charter of the City of Long Beach; and

WHEREAS, it is the desire of the City Council, the governing board of the Employer (hereinafter called “Council”), to provide certain benefits, to establish and to set the working conditions of said Employee, and to memorialize the conditions of the City Manager's employment.

WHEREAS, it is the desire of the Council (1) to retain the services of the City Manager, (2) to make possible full work productivity by assuring the City Manager's morale and reasonable security, and (3) to provide a just means for terminating the City Manager's employment when the Council may desire to do so; and

NOW, THEREFORE, in consideration of mutual covenants herein contained, the parties agree as follows:

Section 1: Duties

The Employer hereby agrees to employ the Employee as City Manager of said Employer to perform the functions and duties specified in Section 20 of the Charter of the City of Long Beach and to perform other legally permissible and proper duties and functions as the Council shall from time to time assign. If additional duties and responsibilities are assigned, the same shall be in character and consistent with the position of City Manager. The Employee shall follow and implement policy and administrative initiatives made by the Council.

Section 2: Term

A. Except as otherwise provided herein, the Employee agrees to remain in the exclusive employ of Employer until March 16, 2018, and will neither accept other employment nor become employed by any other employer until said termination date, unless said termination date is affected as hereinafter provided. The Employee shall devote his full time to the duties of City Manager and to the performance of his duties.
B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from this position with the Employer, subject only to the provisions set forth in Section 5 of this Agreement.

C. In the event the Employer desires not to enter into a successor to this Agreement at the end of its current term, the Employee shall be given at least two (2) months' written notice thereof, provided, however, that nothing contained herein shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of the Employee at any time, subject to the provisions set forth in Section 4 of this Agreement. In the event both parties desire to enter into a successor to this Agreement, they agree to negotiate such contract prior to the termination of this Agreement. Nothing contained herein shall extend this Agreement beyond March 16, 2018.

Section 3: Suspension

The Employer may suspend the Employee, with or without pay, for a period not to exceed ten (10) calendar days (provided, however, that the Employee shall retain all benefits during said suspension) at any time during the term of this Agreement, but only if:

1. Three (3) or more members of the Council agree to take such action; or,
2. the Employee is first provided with written charges and provided with an opportunity to meet with the full Council about such charges prior to said suspension. As allowed by law, said meeting shall be private.

Section 4: Termination and Severance Pay

A. Termination Without Just Cause and Severance Pay—In the event the Employee is terminated by the Council before the expiration of this Agreement, and such termination is not done pursuant to paragraph B below, then, in that event, the Employer agrees to pay the Employee a lump sum payment equal to the balance of his salary for the remaining term of this Agreement or six (6) months of salary, whichever is less. Employee shall also be compensated for all accrued but unused, vacation and other benefits that have accrued to that date, provided, however, that the Employee shall be entitled to be paid for thirty (30) percent of his accrued but unused sick leave. Said lump sum payment shall be reduced by that amount, if any, earned by the Employee should he obtain other employment prior to the expiration of the term of this Agreement. The Employer will use his best efforts to obtain other comparable employment.

B. Termination For Just Cause—The Employee may be terminated for incompetency, misconduct, or for conviction during the term of this Agreement. Prior to terminating the Employee for cause, the Employer shall provide a thirty (30) day written notice to the Employee to cure any deficiency in the performance of the Employee's duties. If, in the opinion of the Council, such deficiency is not cured, the Employee shall be entitled
to written charges and a hearing before an arbitrator selected by the parties pursuant to
the voluntary labor arbitration rules of the American Arbitration Association.

For the purpose of this agreement, termination shall occur when three (3) or more members of
the five member governing body vote to terminate the Employee at a duly authorized public
meeting.

For a period of 120 days following termination, the Employer shall pay the Employee's salary
as detailed above and the cost to continue the following benefits:

1. Health insurance for the Employee and all dependents;
2. Life insurance;
3. Short-term and long-term disability; and
4. Any other available benefits.

Section 5:  Resignation

In the event Employee voluntarily resigns his position with the Employer before the
expiration of the term of his employment, then the Employee shall give the Employer
two (2) months written notice in advance, unless the parties agree otherwise.

In the event the Employee resigns during the term of this Agreement, the Employee
shall be compensated commensurate with all other "exempt" employees for all earned
but unused vacation and other accrued benefits to date, provided, however, that the
Employee shall be entitled to be paid for thirty (30) percent of his accrued but unused
sick leave.

Section 6:  Disability

If the Employee is permanently disabled or is otherwise unable to perform his duties
because of sickness, accident, injury, mental incapacity or health for a period of six (6)
successive weeks beyond any accrued sick leave, the Employer shall have the option to
terminate this Agreement, subject to the requirements of Section 4(B).

Section 7:  Salary

The Employer agrees in accordance with the allocation listed for the City Manager
position in the City of Long Beach 2015/16 adopted budget, and subsequently adopted
budgets, to pay the Employee for his services rendered pursuant hereto an annual base
salary, payable in installments at the same time as other management employees of the
Employer are paid.

In addition, the Employer agrees to increase said base salary and/or benefits of the
Employee in such amounts and to such extent as the Council may determine that it is
desirable to do on the basis of an annual salary review of said Employee made at the
same time as similar consideration is given other employees or at such other times as
the parties may mutually agree.

Section 8: Performance Evaluation

A. Statement of Goals and Relevant Job Performance Criteria

On or before April 1, 2016, the Council shall distribute to Employee an itemized list
of goals and relevant job performance criteria for the calendar year. On or before
April 1, 2017, the Council shall distribute another itemized list of goals and
performance criteria for that calendar year, which the Council may, at its discretion,
ammend, revise, or supplement.

B. Counselling Sessions

In December 2016, and again December 2017, each individual Councilmember
may, at his or her option, meet and confer with the Employee to discuss his job
performance. Additionally, during these sessions, the Employee shall have the
option of discussing that individual Councilmember's performance over the
preceding calendar year.

C. Performance Assessment

During or after each counseling session (above), each individual Councilmember
shall have the option of distributing to the Employee a written assessment of his job
performance during the preceding calendar year, provided, however, that said
assessment shall consist solely of that individual Councilmember's subjective
analysis and opinion of the Employee's job performance.

Section 9: Hours of Work

It is recognized that the Employee will devote a great deal of time outside the normal-office hours to business of the Employer and to that end Employee shall be allowed to establish an appropriate work schedule. For example, in a given week this may involve significant hours of work outside of normal office hours. There shall be no additional compensation and the Employee shall not be entitled to compensatory time for such services.

Section 10: Outside Activities

Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall neither constitute interference with nor a conflict of interest with his responsibilities under the Agreement.
Section 11: Leaves

The Employee shall receive the same leave benefits identical to all other “exempt” employees as per Section 19 - Personnel Code, Article II - Vacation, Sick Leaves and Similar Benefits of the Code of Ordinances.

Upon commencing employment, the Employee shall be credited with sick, vacation and personal leave equal to that provided to all other “exempt” employees. The Employee shall then accrue sick and vacation leave on an annual basis at same rate provided to all other “exempt” employees.

The Employee is entitled to accrue all unused leave in the same fashion as all other “exempt” employees, and in the event the Employee’s employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation leave, sick leave, personal leave, and other benefits to date in the same manner as all other “exempt” employees.

It is recognized that, given the nature of the Employee’s responsibilities, he may have to attend to City matters on Holidays and weekends without additional compensation.

Section 12: Health and Life Insurance

The Employee shall be entitled to the same maternity leave, hospitalization, major medical and prescription, dental and optical plans, life insurance, accidental death and dismemberment, workers’ compensation and disability insurance available to “exempt” employees pursuant to the Code of Ordinance and the CSEA Collective Bargaining Agreement then in effect.

Section 13: Retirement

The Employer agrees to pay such sums as are mandated by the New York State Employees Retirement System in connection with retirement benefits for the Employee.

Section 14: Dues, Subscriptions and Conferences

A. The Employer agrees to budget and to pay for, professional dues and subscriptions of the Employee necessary for his continuation and full participation in national, regional, state and local associations and organization necessary and desirable for his continued professional participation, growth and advancement, and for the good of the Employer.

B. The Employer shall reimburse the Employee for any reasonable and necessary expenses incurred for conferences required by the Employer or approved in advance by the Employer.
Section 15: Indemnification

In addition to that required under state and local law, the Employer shall defend, save harmless and indemnify the Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Employee's duties as City Manager. The Employer will pay the amount of any settlement or judgment rendered thereon unless otherwise prohibited by law.

Section 16: Bonding

The Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 17: No Reduction of Benefits

The Employer shall not at any time during the term of this Agreement reduce the Employee's salary, except to the degree that such a reduction is made across-the-board for all "exempt" employees of the Employer.

Section 18: Notices

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service postage prepaid, addressed as follows:

(1) EMPLOYER: City of Long Beach
    1 West Chester Street
    Long Beach, New York 11561

(2) EMPLOYEE: JACK SCHNIRMAN
    Long Beach, New York 11561

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 19: General Provisions

A. The text herein shall constitute the entire Agreement between the parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Employee.
C. This Agreement shall become effective commencing March 16, 2016.

D. Employee acknowledges and agrees that Employee was provided the opportunity to have this Agreement reviewed by legal counsel of Employee’s choice.

E. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

F. The language of all parts of this Agreement shall be construed as a whole, according to their fair meaning, and not strictly for or against either party, regardless of who drafted them.

IN WITNESS WHEREOF, the City of Long Beach of the County of Nassau, State of New York, pursuant to City Council Resolution No.  , dated March 15, 2016, attached hereto and made a part hereof, has caused this Agreement to be signed and executed in its behalf by its City Council President, and duly attested by its City Clerk and Corporation Counsel and the Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

[Signature]
City Council President of the City of Long Beach

[Signature]
JACK SCHIRMERMAN

ATTEST:

[Signature]
David Fraser
City Clerk

(Seal)
AGREEMENT

WHEREAS, the Employee, Robert M. Agostisi ("Employee"), who is employed as the Corporation Counsel of the City of Long Beach ("City" or "Employer"), has communicated his intention to resign from his position; and

WHEREAS, the City Manager, Jack Schnirman ("City Manager") has conveyed his desire to retain Employee in order to ensure the stability of the Office of Corporation Counsel and the City at large, and to ensure the proper supervision and handling of various legal matters and issues, including but not limited to negotiations, potential litigation, and other tasks associated with iStar Financial, Inc.'s request for a Payment-in-Lieu-of-Taxes ("PILOT") to the Nassau County Industrial Development Agency, and an extended hearing/trial in the CPLR Article 78 proceeding known as LBFFA v. City of Long Beach et al., Index No. 15-005301, which is scheduled to commence on January 17, 2017; and

WHEREAS, the parties have determined that the City's interests are best served by retaining Employee; and

WHEREAS, it is hereby stipulated and agreed by and between the parties, for good and valuable consideration, as follows:

1. The parties understand and agree that Employee will remain within the employ of the City through (at least) January 27, 2017, and that Employee will continue to perform his regular job functions during this period, including but not limited to those set forth in the "whereas" clauses, above (which are all incorporated by reference in this Agreement). Nothing in this Agreement is intended to, or does, prohibit or preclude Employee from working and remaining employed by the City beyond January 27, 2017.

2. In exchange for the foregoing, at the time Employer provides the terminal payout set forth in paragraph 2 of this Agreement, Employer shall also pay Employee an additional sum of $8,608.42, which shall compensate Employee (in full) for the four (4) month period between September 2014 and December 2014 when he served as Acting Corporation Counsel, but continued to receive the salary and wages attendant to his former position of Assistant Corporation Counsel (($138,825.27 [2014 Corporation Counsel salary] - $113,000 [2014 Assistant Corporation Counsel salary]) / 3 = $8,608.42).

3. In further exchange for the foregoing, and in light of the identical practices utilized upon separation with respect to all other Civil Service "exempt" class employees since at least January 2012, and in recognition of the Employee's unique skills, knowledge, insight, and exceptional job performance to date, the Employer agrees that, within ten (10) calendar days from his separation from City service (irrespective of the manner of separation), he will be compensated for all hours contained in his unused banks of accrued time, including sick, vacation, and personal banks, at his full rate of pay, in a single lump-sum payment. Accordingly, Employee’s terminal payout shall be calculated by multiplying the hours contained in his accrued time banks (as measured at the conclusion of employment) by his hourly rate of pay. For purposes of this Agreement, the term "hourly rate of pay" shall refer to Employee's
hourly wage on the date this Agreement is executed, and shall also account for and include any
subsequent increases that Employee may receive prior to his separation from City service. Any
decreases in Employee’s hourly wage that may occur, prior to separation from City service, shall
have no impact whatsoever on this Agreement and/or Employer’s obligations hereunder.

4. This Agreement shall have full force and effect, regardless of the manner by
which Employee ultimately separates from City service (e.g., resignation, discharge, etc.).

5. This Agreement sets forth the entire agreement between the parties hereto, and
fully supersedes any prior agreements or understandings between the parties. The parties further
acknowledge that this Agreement cannot be changed or modified except by written agreement
signed by the parties.

6. This Agreement shall be governed and conformed in accordance with the laws of
the State of New York without regard to its conflict or choice of law provisions. In the event any
of the parties breach any provision of this Agreement, the parties mutually consent to the
jurisdiction and venue of any courts of or in the State of New York. The parties represent that
they have authority to enter into this Agreement.

7. The parties affirm that they may institute an action to specifically enforce any
term or terms of this Agreement. If any provision of this Agreement is declared illegal or
unenforceable by any court of competent jurisdiction, the parties agree that such provision shall
immediately become null and void, leaving the remainder of this Agreement in full force and
effect. If any of the language in this Agreement is found to be unlawful or unenforceable, the
parties agree to execute a binding and enforceable replacement in a manner which provides
Employee with the same monies or benefits that he was/is otherwise entitled to receive under the
terms of this Agreement. The Employee and City agree to undertake their best efforts, including
all steps and efforts contemplated by this Settlement Agreement, and any other steps and efforts
that may become necessary by order of the Court or otherwise, to effectuate this settlement.

8. Employee agrees to keep this Agreement, and the existence of this Agreement,
strictly confidential unless and until such time that he institutes a legal action or proceeding to
enforce any term or terms of this Agreement. That notwithstanding, Employee may present this
Agreement to City officials or employees whenever it may be necessary to secure payment under
this Agreement.
9. This Agreement shall be governed and conformed in accordance with the laws of the State of New York without regard to its conflict or choice of law provisions. In the event any of the parties breach any provision of this Agreement, the parties mutually consent to the jurisdiction and venue of any courts of or in the State of New York.

Employee

[Signature]

Date: 12/8/16

Jack Schnirman
City Manager

[Signature]

Date: 12/8/16

Sworn to Before Me on This
X 27th Day of December 2016

Notary Public

JANET A GALLAGHER
Notary Public, State of New York
No. 04104788575
Qualified in Nassau County
Commission Expires Dec 31, 2017
SUPPLEMENTAL AGREEMENT

WHEREAS, on December 8, 2016, the Employee, Robert M. Agostisi ("Employee") and the City of Long Beach ("City"), executed an Agreement concerning the Employee’s terminal payout, including but not limited to the method of calculating said payout, the timing of said payout, and the amount of said payout; and

WHEREAS, the parties wish to modify a provision of the foregoing Agreement relating to the timing of Employee’s terminal payout; and

WHEREAS, the foregoing Agreement requires that any and all modifications be executed by a written agreement signed by the parties; and

WHEREAS, the parties have therefore determined that their best interests are served by the execution of this Supplemental Agreement; and

WHEREAS, it is hereby stipulated by and between the parties, for good and valuable consideration, as follows:

1. This Supplemental Agreement affects, and is limited to, only those modifications set forth herein. As such, the December 8, 2016 Agreement, and all terms and conditions set forth therein, shall remain in force and effect, except for those which are expressly modified herein.

2. Paragraph 3 of the December 8, 2016 Agreement is hereby modified as follows. The parties agree that eighty percent (80%) of Employee’s terminal payout (as calculated in the December 8, 2016 Agreement) shall be paid to Employee, in a single lump sum payment, on or before November 16, 2017. With respect to the remaining twenty percent (20%) of Employee’s terminal payout, these monies shall be paid to employee, in a single lump sum payment, within ten (10) calendar days from Employee’s separation from City service (irrespective of manner of separation), using the same methodology for calculating said terminal payout as set forth in December 8, 2016 Agreement.

3. With respect to the $8,602.42 payment referenced in paragraph 2 of the December 8, 2016 Agreement, the City shall issue payment to Employee on or before November 16, 2017.

4. Nothing in this Supplemental Agreement alters or affects the City’s continuing obligation, under the terms of the December 8, 2016 Agreement, to compensate Employee for any additional (unused) personal, sick and/or vacation time that may or will accrue between November 16, 2017, and the date on which Employee separates from City service. These monies, which are due and owing to Employee in addition to the 20% terminal payout entitlement set forth above, shall be paid to Employee within ten (10) calendar days from Employee’s separation from City service, in a single lump sum payment, within ten (10) calendar days from Employee’s separation from City service (irrespective of manner of separation), using the same methodology for calculating said terminal payout as set forth in December 8, 2016 Agreement.
5. This Supplemental Agreement sets forth all modifications to the December 8, 2016 Agreement. The parties further acknowledge that these modifications cannot be changed or altered absent another written agreement signed by the parties.

[Signature]
Employee

[Signature]
Jack Schnirman
City Manager

Sworn to Me on This
2nd Day of October 2016

[Signature]
Notary Public

JANET A. GALLAGHER
Notary Public, State of New York
No. 01GA4788575
Qualified in Nassau County
Commission Expires Dec. 31, 2017