



AN HKA COMPANY

Dave Bones
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October 29, 2020

VIA E-MAIL: rspolzino@abramslaw.com

Robert A. Spolzino, Esq.
Abrams Fensterman LLP
81 Main Street
Suite 306
White Plains, NY 10601

Re: Sinclair Haberman & Belair Building, Inc. vs. Zoning Board of Appeals of the City of Long Beach & the City of Long Beach

Dear Mr. Spolzino:

This letter agreement (“Agreement”) confirms the retention of The Kenrich Group LLC and HKA Global, Inc., (collectively referred to as “HKA”) effective as of October 29, 2020, by Abrams Fensterman LLP (“Counsel”), as attorneys for and on behalf of the City of Long Beach (“Client”), to render professional services in connection with the above-referenced matter.

Background

HKA’s professional services will be associated with the Office of Corporation Counsel, City of Long Beach project. The adverse party is Sinclair Haberman and Belair Building, Inc.

Scope of Services

The professional services may include the following business consulting areas: expert testimony related to commercial damages.

Compensation

The engagement team will be led by Troy Dahlberg, who will be assisted by others as appropriate. HKA will make every reasonable effort to perform the assignment in a cost-effective manner. HKA shall be compensated for professional fees for services performed at the following hourly rates:

Troy Dahlberg, Partner	\$575
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This hourly rate shall be subject to adjustment once annually beginning on January 1, 2021. We shall advise you in advance regarding any rate increases. In addition, reasonable travel expenses shall be separately reimbursed at cost.

Counsel and Client acknowledge that Counsel is authorized to act on behalf of Client with respect to this matter. HKA agrees that Client is solely responsible for the payment of our invoices.

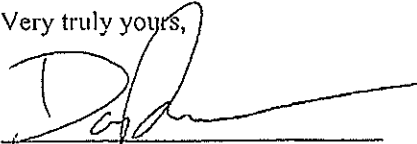
Terms and Conditions

The attached HKA Terms and Conditions are incorporated by reference and made a part of this Agreement in their entirety, and they shall govern the parties' performance obligations. This Agreement, including the attached HKA Terms and Conditions, constitutes the entire agreement among Client, Counsel, and HKA. All previous agreements or understandings with respect to the referenced subject matter, whether written or oral, are superseded and voided by this Agreement. No amendment or modification of this Agreement shall be valid unless it shall be in writing and signed by Client, Counsel, and HKA.

We greatly appreciate the opportunity to work with you on this matter. If you have any questions, please do not hesitate to contact me.

Please countersign in the space provided below indicating your agreement to the foregoing terms, and return to me at your earliest convenience.

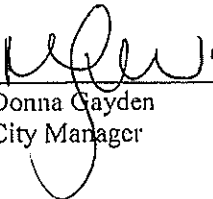
Very truly yours,



Dave Bones
Partner
HKA Global, Inc. ("HKA")

Acknowledged and Agreed By:

City of Long Beach
("Client")

By:  _____
Donna Gayden
City Manager

Abrams Fensterman LLP
("Counsel")

By: _____
Robert A. Spolzino, Esq.
Partner



HKA Terms and Conditions

1. **SCOPE OF SERVICES.** HKA shall perform the services outlined in the attached letter dated October 29, 2020, ("Agreement"), and as further directed by Client and Counsel.
2. **COMPENSATION.**
 - (a) *Fees and Expenses.* As consideration for the services to be performed, HKA shall be compensated in accordance with the Agreement.
 - (b) *Reserved.*
 - (c) *Invoicing and Payment.* On a monthly basis, HKA shall invoice its fees and reimbursable expenses to Client. Any supporting documentation provided with the invoice shall be provided in electronic format and supported by electronic signatures. Client shall not contest the validity of signatures solely because they are electronic.
 - i. In the absence of a good faith, reasonable objection to an invoice, Client agrees to pay HKA in full within thirty (45) calendar days of its receipt of the invoice.
 - ii. Client shall pay HKA's invoiced fees and reimbursable expenses regardless of the outcome of any Project dispute in connection with which HKA provides advice, an expert report, or expert witness testimony, including disputes resolved by settlement, mediation, arbitration, litigation or any other method.
 - (d) *Suspension for Non-Payment; Payment Prior to Final Performance.* HKA reserves the right to suspend the performance of all services without penalty in the event Client fails to timely and fully pay HKA in accordance with this Section 2. HKA shall not be obligated (i) to deliver any final work product, (ii) to provide any declaration, presentation, deposition, or testimony of any nature, or (iii) to resume work in the event of a suspension, until Client pays all amounts invoiced (whether or not overdue) or to be owed (for services performed but not yet billed).
 - (e) *Cost Estimate.* For purposes of assisting Client in budgeting and planning, HKA may prepare an estimate of the cost of performance of its services under the Agreement. Client understands and agrees that any amount estimated by HKA is intended to be and shall be construed only as an estimate and not as a guaranty or warranty by HKA with respect to the actual final cost for performing the services under the Agreement.
 - (f) *Witness Fee.* In the event that HKA is served with a subpoena or is otherwise required by issuance of any order, rule or decision to attend a deposition, arbitration or other judicial or administrative proceeding, or otherwise to give testimony or produce documents, regarding any matter related to the Project or to the services performed under the Agreement, and such testimony or document production was not otherwise anticipated by HKA to be within the scope of services envisioned by the Agreement, Client agrees that HKA shall be compensated in accordance with its then-current fee schedule for (i) the actual hours expended in responding to any such request, including time spent at such proceeding, and in preparation therefor, and in travel to and from such proceeding, and (ii) related costs and expenses, including document reproduction costs, administrative costs, and travel expenses. This Section 2(f) shall survive the expiration, cancellation or termination of the Agreement.
3. **TERM.** Unless terminated earlier pursuant to Section 4, the Agreement shall be effective from the date of execution and shall continue in full force and effect until completion of performance of all services required, at which time it shall expire.
4. **TERMINATION.** Either party shall have the right to terminate the Agreement without cause or penalty upon providing written notice of such termination to the other party. In the event of a termination by Client, HKA shall discontinue its performance of services as promptly as is reasonably possible following its receipt of written notice, and it shall take all reasonable actions to minimize further charges to Client. Notwithstanding any such termination, Client shall remain obligated to compensate HKA for all services performed and expenses incurred in accordance with the Agreement.
5. **CONFIDENTIALITY.** Client shall promptly provide to HKA all documents and information identified by HKA as being necessary to perform the services required of it under the Agreement. HKA shall not disclose to any third party any of the provided documents or information determined to be confidential, except as may be required by legal process; provided, however, that HKA shall be entitled to describe the general nature of the Project, identify Client as its client, and describe the general nature of its services under the Agreement for sales, marketing and public relations purposes.
6. **WARRANTY OF PERFORMANCE.** HKA shall exercise that degree of care and skill ordinarily exercised under similar circumstances by members of its profession performing the types of services as those to be performed by HKA under the Agreement. Client and Counsel acknowledge that all HKA opinions and work product are wholly dependent on the accuracy and completeness of the documents, data and information Client provides, and that HKA shall not be responsible for any claims resulting from inaccurate or incomplete Client documents, data or information. HKA makes no guarantees or warranties of any nature regarding (i) the admissibility of opinions, reports or testimony in any dispute proceeding, or (ii) the impact of such opinions, reports or testimony on the outcome of the underlying matter.
7. **WORK PRODUCT.**
 - (a) *Drafts.* HKA's preparation of its work product is an iterative process during which its analysis is refined as new information and data is collected and reviewed. Consistent with its normal business practices, and in the absence of an advance written agreement between the

parties, HKA will discard all work papers and related documents on a routine basis as work tasks are completed, and will not reference such materials in its final work product. For the purposes of this provision, HKA work papers shall be defined as including, without limitation, preliminary conclusions, superseded drafts, comments, notations, interim analyses, work lists, and irrelevant data.

(b) *Ownership and Use.* Client and Counsel acknowledge that HKA shall retain all ownership rights in its work product until Client has paid all HKA invoices in full, that HKA shall prepare its work product solely for contemporaneous use by Client for this Engagement, and that the HKA work product is not intended for use at any other time or location, for any other purpose, or by any other party. Client and Counsel shall not, without the prior written consent of HKA, (i) use any part of HKA's work product for purposes unrelated to this Engagement, (ii) modify HKA's work product, or (iii) disclose or distribute any part of the work product to any other person, firm or entity, other than as reasonably necessary in connection with this engagement. HKA shall be entitled to indemnification from the party that breaches this provision, in addition to all other available remedies at law or in equity.

8. **INTELLECTUAL PROPERTY.** Client and Counsel acknowledge and agree that in performing the services under the Agreement, HKA may utilize proprietary works, including without limitation software, tools, models, specifications and other materials, that are developed by HKA or a third party prior to the start of or outside of this engagement ("Preexisting Materials"). HKA owns all right, title and interest in and to the Preexisting Materials. To the extent HKA incorporates Preexisting Materials into the work product, or any intellectual property rights in Preexisting Materials are required in connection with the development, use or commercialization of any work product, and once all fees owed to HKA under the Agreement have been fully paid by Client, HKA shall grant Client a fully-paid, non-transferable, nonexclusive, royalty-free user license to use the Preexisting Materials for purposes related to the scope of services performed by HKA under the Agreement.

9. **INDEMNIFICATION.**

(a) *Indemnification by HKA.* HKA shall indemnify, defend and hold harmless Client and its employees, officers, agents, successors and assigns from and against all liability, claims, suits, losses, damages, costs and demands, on account of bodily injury (including, without limitation, death) or property damage, sustained by any person or entity not a party to the Agreement, arising out of or connected with HKA's performance of services required under the Agreement, but only to the extent that such injury or damage is caused by the gross negligence or intentional misconduct of HKA.

(b) *Indemnification by Client.* Client shall indemnify, defend and hold harmless HKA and its employees, officers, agents, successors and assigns from and against all liability, claims, suits, losses, damages, costs and demands, (i) on account of bodily injury (including, without limitation, death), or property damage, sustained by any person or entity not a party to the Agreement, but only to the extent that such injury or damage is caused by the gross negligence or intentional misconduct of Client, or (ii) on account of any claim not involving bodily injury or property damage whereby a third party alleges to have been adversely impacted by the services HKA provides on behalf of Client.

10. **LIMITATION OF LIABILITY.** Notwithstanding any other provision of the Agreement (including these Terms and Conditions) to the contrary, HKA's liability to Client and Counsel arising out of or related to HKA's performance of services under the Agreement, whether based in contract (including breach of warranty and indemnification), tort (including negligence), strict liability or otherwise, shall not exceed in the aggregate the total fees paid to HKA for services performed under the Agreement. In no event shall HKA be liable in contract, tort or otherwise, to Client or Counsel for any lost, delayed or diminished profits, lost revenues or opportunities, losses by reason of delay or inability to utilize or complete the Project, or any other incidental, special, punitive, exemplary, indirect or consequential damages of any kind or nature resulting from HKA's performance or failure to perform services under the Agreement. No deductions shall be made from HKA's compensation due to any claim by the Client or by others not a party to the Agreement. The provisions of this Section 10 shall survive the expiration, cancellation or termination of the Agreement.

11. **DOCUMENT DISPOSITION.** At the end of the Agreement term, Client or Counsel may take the following actions with respect to disposition of Client documents: (a) direct HKA to return all such documents to Client; (b) authorize HKA to discard such documents; or (c) direct HKA to store any or all such documents at Client's expense. HKA will seek Client's direction in writing regarding disposition of such documents. If Client or Counsel does not respond within thirty (30) days of receiving this request, HKA reserves the right to destroy or discard any such documents without penalty.

12. **INDEPENDENT CONTRACTOR.** HKA is and shall be an independent contractor in the performance of services under the Agreement, maintaining complete control of its employees and operations. Neither HKA nor anyone employed by it shall be the agent, representative, employee or servant of Client or Counsel in the performance of services under the Agreement.

13. **BUSINESS RELATIONSHIPS.**

(a) HKA's evaluation of business relationships that may impact its ability to accept or perform an engagement is based on the information Client and Counsel provide to HKA regarding the identity of interested parties. Client and Counsel acknowledge that to the best of their knowledge they have disclosed to HKA all entities with an interest in the matter underlying this engagement, and agree to promptly notify HKA of any additional interested parties of which they become aware throughout the term of this Agreement.

(b) The performance of professional services by HKA pursuant to this Agreement is not intended to establish a fiduciary relationship between HKA and Client or between HKA and Counsel, and such performance shall not preclude HKA or any of its affiliates from working on unrelated matters for any third parties that are, or may be, adverse to Client or Counsel, provided HKA complies with its confidentiality obligations under Section 5 and does not otherwise use or disclose any confidential information it obtained from Client or Counsel in connection with such third party work.

14. **NO SOLICITATION.** During the term of the Agreement and for a period of two years after its expiration, cancellation or termination, Client and its affiliates and agents (including, without limitation, its attorneys) shall not, without the prior written consent of HKA, directly or indirectly solicit, recruit, offer employment, employ or otherwise engage or retain as an employee, agent, consultant or independent contractor any person who, at any time during the term of the Agreement, was an employee or agent of HKA.

15. **SEVERABILITY.** If any provision contained in the Agreement, including in these Terms and Conditions which are incorporated by reference therein and form a part thereof, is held to be unenforceable by a court of competent jurisdiction, the Agreement shall be construed

as if such provision did not exist, and the unenforceability of any such provision shall not be held to render any other provision of the Agreement unenforceable.

16. SUCCESSORS AND ASSIGNS. The covenants and agreements contained herein shall apply to and inure to the benefit of and be binding upon the parties hereto and upon their respective successors and assigns.

17. WAIVER. The failure of Client, Counsel or HKA to require the performance of any provision of the Agreement shall in no way affect the respective rights of Client, Counsel or HKA to enforce the provision nor shall the waiver by Client, Counsel or HKA of any breach of any provision be construed to be a waiver of any succeeding breach or as a waiver or modification of such provision.

18. DISPUTES.

(a) *Governing Law*. The Agreement, including these Terms and Conditions which are incorporated by reference therein and form a part thereof, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to the Agreement, or the negotiation, execution or performance of the Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into the Agreement), shall be governed by, and enforced in accordance with, the substantive laws of the State of Delaware, including its statutes of limitations.

(b) *Dispute Forum*. All claims or causes of action based upon, arising out of or related to the Agreement, or the negotiation, execution or performance of the Agreement, shall be brought only in a federal or state court located in the Commonwealth of Pennsylvania, County of Philadelphia. The parties hereby irrevocably submit and consent in advance to the exclusive jurisdiction of such courts, agree that venue in such courts is proper and convenient, and expressly waive any objection or defense they may have based upon lack of personal jurisdiction or inconvenient forum.

(c) *Service of process*. Service of process, summons, notice or other document by certified mail to a party's address as set forth herein shall be effective service of process for any suit, action, or other proceeding brought pursuant to this Section 18.

(d) *Waiver of Jury Trial*. To the fullest extent permitted by law, the parties hereby waive any rights they may have to a trial by jury in any action or proceeding brought by one against the other(s) in connection with any suit, action, or other proceeding brought pursuant to this Section 18.

(e) *Attorneys' Fees*. The substantially prevailing party in any suit, action, or other proceeding brought pursuant to this Section 18 shall be entitled to an award of costs and reasonable attorneys' fees.

END OF DOCUMENT