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January 3, 2018

PRIVILEGED & CONFIDENTIAL

Robert M. Agostisi
Office of Corporation Counsel
City of Long Beach
1 West Chester Street
Long Beach, NY 11561

Re: SINCLAIR HABERMAN and BELAIR BUILDING, LLC v. ZONING BOARD OF APPEALS OF THE CITY OF LONG BEACH, ROCCO MORELLI, LENNY TORRES, MARCEL WEBER, MICHAEL FINA, STUART BANSCHICK, LORRAINE DIVONE, MICHAEL LEONETTI, THE CITY OF LONG BEACH, SCOTT KEMINS as Commissioner of the Department of Buildings of the City of Long Beach, and XANDER CORP

Dear Mr. Agostisi:

This letter ("Engagement Letter") confirms our understanding and agreement between the City of Long Beach (the "City") and KPMG LLP ("KPMG"), whereby the Office of Corporation Counsel of the City of Long Beach ("Counsel") has retained KPMG on behalf of the City to assist Counsel in rendering legal advice to the City in connection with the above-referenced matter. The City acknowledges that it has authority to award this contract to KPMG without a request for proposal, and that award of this professional services contract is made in accordance with all applicable laws, regulations, rules, policies, and requirements.

Understanding of Our Role

KPMG's work, to be performed under Counsel's direction, is to assist Counsel with respect to the analysis and consultation related to damages calculations in the above-referenced matter and to perform such other tasks as may be identified and mutually agreed to during the course of this engagement. KPMG understands that Counsel intends to submit to the court expert opinions in the form of a written report from me, which I will prepare, and to call me to give expert testimony at the trial.

All observations and recommendations will be those of the KPMG personnel working on this matter. Counsel and the City will make available to KPMG, in a timely manner, the information necessary for KPMG to complete the services under this Engagement Letter. Counsel and the City acknowledge that their failure to do so could adversely affect KPMG's ability to provide services under this Engagement Letter. KPMG will make all requests for documents through Counsel.



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Conflicts

KPMG has performed a limited internal search for relationships based on the parties identified by Counsel and/or the City. That search did not disclose any relationship between KPMG, or other member firms of the KPMG network of independent firms and firms and entities controlled by, or under common control with, one or more such member firms (collectively, "Member Firms"), and the parties identified by Counsel and/or the City.

KPMG's process for conducting searches of potential conflicts takes place at the time the parties are identified and provided by Counsel and/or the City. However, if KPMG becomes aware of any potential conflicts after the start of the engagement, KPMG will promptly inform Counsel and the City. In addition, during the course of this engagement, Counsel and the City agree that they will inform KPMG of additional parties in this matter or name changes for those parties previously provided. At such time, KPMG will perform an additional limited internal search for relationships on those parties. If identified, KPMG will advise Counsel and the City of the general nature of any services provided to that subject (i.e., audit, tax and/or advisory).

If Counsel and/or the City fail to promptly notify KPMG of its objection to the identified relationship(s), Counsel and the City agree that KPMG's professional relationship with a party does not impact KPMG's engagement to perform the services under this Engagement Letter.

KPMG reserves the right to resign from this engagement at any time if a conflict, as contemplated by the professional standards of the American Institute of Certified Public Accountants ("AICPA"), law or regulation, arises or becomes known to KPMG that prohibits KPMG from conducting this engagement, or in KPMG's judgment, would impair KPMG's ability to perform objectively. If KPMG serves as independent auditors of a party, KPMG may require consent from the party which will be determined on a case-by-case basis.

Engagement Staffing

I, Troy Dahlberg, will participate as Engagement Partner, maintaining overall responsibility for the engagement, including billing and client relations. Thomas Heck will serve as the Engagement Managing Director and will be actively involved in the performance of the engagement and will use such other staff for assistance as deemed necessary.

Indemnification and Limitation of Liability

The City agrees to indemnify and hold harmless KPMG, the other Member Firms, and their affiliates, and their respective partners, principals, employees, and agents (collectively, the "KPMG Parties") from any and all liabilities, costs, and expenses (including, without limitation, attorney's fees and expenses), claims, demands, actions, proceedings, recoveries, settlements or judgments brought against, paid, incurred or suffered by or asserted against any of the KPMG Parties in connection with a third party claim by reason of, or in any way relating to this engagement, other than as finally determined by the arbitration panel



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contemplated in the Alternative Dispute Resolution section of this Engagement Letter to be caused by KPMG or the applicable KPMG Party's own bad faith or willful misconduct. The foregoing indemnification obligation shall apply regardless of whether the third party claim alleges a breach of contract, violation of statute or tort (including without limitation negligence) by KPMG or the applicable KPMG Party. KPMG shall promptly notify the City of any claim for which a KPMG Party seeks indemnification.

KPMG and the other KPMG Parties shall have no liability to Counsel or the City or to any other person or entity for any action taken or omitted to be taken by KPMG or any of the other KPMG Parties in respect of this engagement, except for matters that are finally determined by the arbitration panel contemplated in the Alternative Dispute Resolution section of this Engagement Letter to be caused by KPMG or the applicable KPMG Parties' own bad faith or willful misconduct. The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense or loss asserted, whether in contract, statute, tort (including but not limited to negligence) or otherwise.

Alternative Dispute Resolution

Any dispute or claim arising out of or relating to this Engagement Letter or the services provided hereunder shall be submitted first to non-binding mediation (unless either party elects to forego mediation by initiating a written request for arbitration) and if mediation is not successful within 90 days after the issuance by one of the parties hereto of a request for mediation then to binding arbitration in accordance with the Rules for Non-Administered Arbitration of the International Institute for Conflict Prevention and Resolution ("CPR Arbitration Rules"). Any issue concerning the extent to which any dispute is subject to arbitration, or any dispute concerning the applicability, interpretation, or enforceability of these dispute resolution procedures, including any contention that all or part of these procedures is invalid or unenforceable, shall be governed by the Federal Arbitration Act and resolved by the arbitrators. By operation of this provision, the parties hereto agree to forego litigation over such disputes in any court of competent jurisdiction.

Mediation, if selected, may take place at a location to be designated by the parties using Mediation Procedures of the International Institute for Conflict Prevention and Resolution, with the exception of paragraph 2 (Selecting the Mediator). Arbitration shall take place in New York, New York. The arbitration panel shall have no power to award non-monetary or equitable relief of any sort except as provided in CPR Rule 13 (Interim Measures of Protection). Damages that are inconsistent with any applicable agreement between the parties, that are punitive in nature, or that are not measured by the prevailing party's actual damages shall be unavailable in arbitration or any other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitration panel have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction.

Any party hereto may seek to enforce any written agreement reached by the parties during mediation, or to confirm and enforce any final award entered in arbitration, in any court of competent jurisdiction. Notwithstanding the agreement to such procedures, any party hereto may seek equitable relief to enforce its rights in any court of competent jurisdiction.



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Timing and Professional Fees

KPMG is prepared to begin work upon receipt of a signed copy of this Engagement Letter, with the start date anticipated on or about January 3, 2018 or at a time mutually determined by Counsel and KPMG.

KPMG's fees for these services will be based on hourly rates and any out-of-pocket expenses incurred by KPMG in connection with the performance of the services herein. KPMG's professional fees for these services are based upon the level of experience of the professionals providing the services and the amount of time required to complete the engagement.

KPMG's current hourly rates by professional level for these services are:

Para-Professional	\$ 100
Associate	\$ 225
Senior Associate	\$ 300
Manager	\$ 400
Director	\$ 500
Partner/Principal/Managing Director	\$ 575

KPMG's rates are subject to adjustment from time to time and at least annually. KPMG will advise the City and Counsel immediately if a rate adjustment is being made.

Because of the unpredictable nature of a dispute, KPMG generally does not attempt to quantify the total expected fees in the matter prior to commencing work. The time incurred by KPMG will depend on the extent and nature of available information, the outcome of certain procedural and legal tasks, and on information that KPMG's procedures may reveal as work progresses.

KPMG's fees and expenses are not contingent upon the final results, nor does KPMG guarantee any result or resolution in the above-referenced matter.

KPMG will present invoices to the City on a monthly basis, and the City's payments are due within 30 days of each invoice date. That notwithstanding, KPMG acknowledges that cash flow and/or operational constraints present certain challenges for municipal corporations such as the City. Accordingly, KPMG agrees that, for all invoice(s) in excess of \$50,000, it will use best efforts to negotiate a payment deadline that considers and coincides with the City's regular and routine bonding protocols, procedures and practices, and otherwise complies with all applicable laws rules and regulations. The City is solely responsible for the payment of KPMG's fees and expenses. The name and address of the City's designee to receive and approve KPMG's invoices is indicated on the signature page of this Engagement Letter. KPMG reserves the right to halt further services until payment is received on past-due invoices. It is KPMG's normal practice to be paid in full for all work performed to date prior to issuance of a report, deposition testimony and/or trial testimony.



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In addition, KPMG will be compensated for any time and expenses (including fees and expenses of legal counsel) that may be incurred in considering or responding to discovery requests or other requests for documents or information, or in participating as a witness or otherwise in any legal, regulatory or other proceedings, as a result of KPMG's performance of these services.

Where KPMG is reimbursed for expenses, it is KPMG's policy to bill clients the amount incurred at the time the good or service is purchased. If KPMG subsequently receives a volume rebate or other incentive payment from a vendor relating to such expenses, KPMG does not credit such payment to client. Instead, KPMG applies such payments to reduce its overhead costs, which costs are taken into account in determining KPMG's standard billing rates and certain transaction charges which may be charged to clients.

Other Matters

All disputes with regard to, arising out of, or relating to services provided pursuant to this Engagement Letter (whether based in contract, tort, statute, regulation, or otherwise and whether pending in court or in an arbitral forum) shall be governed by and construed in accordance with the substantive and procedural laws of the State of New York, including without limitation, its statutes of limitations, without regard to the conflict of laws provisions of New York or any other state or jurisdiction.

KPMG understands that its work product and files may become subject to discovery; however, until such materials are sought by subpoena or other process, they will be maintained by KPMG as confidential. It is agreed that those materials and all other working papers and other documents prepared by KPMG pursuant to this engagement will be maintained as confidential materials and will not be disclosed to third parties without Counsel's consent, except as may be required by law, regulation, or judicial or administrative process. KPMG agrees to notify Counsel promptly of any of the following events: (a) a request by anyone to examine, inspect, or copy such documents or records; or (b) any attempt to serve, or the actual service of, any court order, subpoena, or summons upon KPMG that requires the production of such documents or records. It is further understood that if KPMG is not requested by Counsel to provide expert testimony or an expert report in connection with this matter, all opinions of KPMG personnel and work product shared by KPMG with Counsel or the City shall be maintained as confidential and shall not be shared with any other person or entity.

KPMG's services as described in this Engagement Letter constitute an Advisory engagement conducted under the AICPA Standards for Consulting Services. Such services are not intended to be an audit, examination, attestation, special report or agreed-upon procedures engagement as those services are defined in AICPA literature applicable to such engagements conducted by independent auditors. Accordingly, these services will not result in the issuance of a written communication to third parties by KPMG directly reporting on financial data or internal control or expressing a conclusion or any other form of assurance.

KPMG may communicate with Counsel and the City by electronic mail or otherwise transmit documents in electronic form during the course of this engagement. Counsel and the City accept the inherent risk of these forms of communication (including the security risks of interception of or unauthorized access to such



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communications, the risks of such corruption of such communications and the risks of viruses or other harmful devices) and agrees that it may rely only upon a final hardcopy version of a document or other communication that KPMG transmits to Counsel or the City unless no such hard copy is transmitted by KPMG to Counsel or the City.

For engagements where services will be provided by KPMG through offices located in California, Counsel and the City acknowledge that certain of KPMG's personnel who may be considered "owners" under the California Accountancy Act and implementing regulations (California Business and Professions Code section 5079(a); 16. Cal. Code Regs. Sections 51 and 51.1) and who may provide services in connection with this engagement, may not be licensed as certified public accountants under the laws of any of the various states.

Counsel and the City acknowledge and agree that the services under this Engagement Letter may be performed by a Member Firm located outside of the United States. Counsel and the City understand that each Member Firm is a separate, distinct and independent legal entity and is not a partner, principal, agent or affiliate of KPMG and KPMG is not a partner, principal, agent or affiliate of any other Member Firm. Any services performed by a Member Firm shall be performed in accordance with the terms of this Engagement Letter (including the confidentiality terms hereof), but KPMG shall remain responsible to Counsel and the City for the performance of such services.

KPMG uses the services of third party service providers within and outside of the United States to provide at KPMG's direction administrative, analytical and clerical support services to KPMG. These parties may have access to certain of your information including confidential information. KPMG represents to Counsel and the City that each such Member Firm or third party service provider has agreed to conditions of confidentiality with respect to such information to the same or similar extent as KPMG has agreed to herein.

KPMG has full responsibility to cause these parties to comply with such conditions of confidentiality, and the same standards of professional practice as those set forth in the "Indemnification and Limitation of Liability" section of this Agreement (above), and KPMG shall be responsible for any consequences of their failure to comply. Accordingly, Counsel and the City consent to KPMG's disclosure to a Member Firm or third party service provider and the use by them of data and information including confidential information, received from or at the request or direction of Counsel and/or the City for the purposes set forth in this Engagement Letter. Counsel and the City further agree that any claim relating to the services under the Engagement Letter may only be made against KPMG and not any other Member Firm or third party service provider referred to above.

Entire Agreement

This Engagement Letter constitutes the entire agreement between KPMG and the City with respect to the services under this Engagement Letter and supersedes all other oral and written representation, understandings or agreements relating thereto.



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The City acknowledges agreement with the terms stated herein as evidenced by their signature below. Please return to KPMG the signed copy of this letter. KPMG will begin work after it has received an Engagement Letter properly executed by the City.

KPMG appreciates the opportunity to work the City in this matter.

Very truly yours,

KPMG LLP

Troy Dahlberg
Partner

ACCEPTED:

The City of Long Beach (by its in-house counsel)

Authorized Signature

Corporation Counsel

Title

1/3/18

Date



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Name and address of person designated to receive and approve invoices related to this matter:

Name: Robert Agostisi, subject to City Manager approval (currently Michael Taughey)
Address: 1 West Chester Street
Long Beach, NY 11561
Phone: (516) 431-1003
Fax: (516) 431-1016
E-Mail: ragostisi@longbeachny.gov

December 5, 2017

Item No. 6
Resolution No. 114/17

The following Resolution was moved by Mr. Eramo
and seconded by Pres. Torres :

Resolution Authorizing the Retention of Expert Consultants and Witnesses.

WHEREAS, the Court has ordered a damages inquest (a/k/a damages trial) in the matter of *Sinclair Haberman and Belair Building, LLC against the Zoning Board of Appeals of the City of Long Beach et. al.* (Index No. 1138/04); and

WHEREAS, the Plaintiffs/Petitioners have alleged that they are entitled to damages in excess of \$50 million; and

WHEREAS, to date, Plaintiffs/Petitioners have adduced no evidence that substantiates, or purports to substantiate, this otherwise conclusory allegation; and

WHEREAS, the sheer size of the foregoing claim has nonetheless forced the City to meticulously examine its defenses thereto; and

WHEREAS, the City has determined that it possesses many viable defenses in this matter, which extend across multiple fields and subject matter areas; and

WHEREAS, the City has determined that its long-term financial interests are best served by engaging a large firm that possesses both the expertise and resources, in a broad array of disciplines, to manage and present these defenses at trial; and

WHEREAS, to promote the effective communication of its defenses at trial, the City has further determined that its interests are advanced by retaining an expert witness who, aside from possessing sufficient subject matter expertise, has testified previously; and

WHEREAS, after careful consideration, the City has determined that KPMG LLP, 1350 Avenue of the Americas, New York, New York 10019 possesses the optimal blend of qualifications to serve as its lead expert consultants and witnesses in this matter; and

WHEREAS, during its review, the City also determined that it possesses one or more defenses that require technical expertise in the various subfields associated with construction management; and

WHEREAS, the City previously utilized the firm of Cashin Spinelli & Ferretti LLP ("CSF"), 801 L.I. Motor Parkway, Hauppauge, New York 11788, as its consultant in connection with its insurance claim (for property damages) following Superstorm Sandy; and

WHEREAS, CSF possessed the broad-based expertise needed to survey and prepare separate analyses for over forty (40) distinct and diverse City properties, including but not limited to the boardwalk, Waste Water Treatment Plant, and Water Purification Plant; and

WHEREAS, CSF's exemplary services led to the City's recovery of the full, \$10 million insurance sublimit (for flood-related damages) within thirty (30) days of the storm; and

WHEREAS, CSF was instrumental in securing an additional \$800,000 in insurance proceeds, for business interruption expenses, despite the fact that the City's carrier had initially disclaimed coverage for same (see Resolution #104/16); and

WHEREAS, consequently, CSF has already demonstrated that it possesses the unique mixture of technical knowledge and highly-specialized expertise needed to successfully convey the City's defenses at trial; and

WHEREAS, to promote the effective communication of those defenses, the City has further determined that its interests are advanced by retaining an expert witness who, aside from possessing sufficient subject matter expertise, has testified previously; and

WHEREAS, after careful consideration, the City has determined that CSF possesses the optimal blend of qualifications needed to serve as its technical consultants and witnesses in this matter;

NOW, THEREFORE, be it

RESOLVED, by the City Council of the City of Long Beach, New York that the Corporation Counsel be and he hereby is authorized to retain the firm of KPMG LLP, 1350 Avenue of the Americas, New York, New York 10019 to provide expert consultant and witness services on behalf of the City of Long Beach, on an as-needed basis, at discounted government rates; and be it further

RESOLVED, by the City Council of the City of Long Beach, New York that the Corporation Counsel be and he hereby is authorized to retain the firm of Cashin Spinelli & Ferretti, LLP, 801 L.I. Motor Parkway, Hauppauge, New York 11788 to provide expert consultant and witness services on behalf of the City of Long Beach, on an as-needed basis. Funds are available in Account No. A1420.54453 (Corporation Counsel-Consultants).

APPROVED:

City Manager

APPROVED AS TO FUNDS:

City Comptroller

APPROVED AS TO FORM & LEGALITY:

Corporation Counsel

VOTING:

Council Member Diamond - RECUSED

Council Member Mandel - AYE

Council Member Moore - AYE

Vice President Eramo - AYE

President Torres - AYE