

KUDMAN TRACHTEN ALOE LLP

Attorneys at Law

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July 9, 2014

*ADMITTED IN NY & NJ
**ADMITTED IN NY ONLY
***ADMITTED IN NY & CA
†ADMITTED IN NY, NJ & PA
††ADMITTED IN NY, NJ, CT & GA
†††ADMITTED IN NY, NJ & FL
#ADMITTED IN NJ, NY ADMISSION PENDING

By Electronic Mail

Corey Klein, Esq.
Corporation Counsel
City of Long Beach
One West Chester Street
Long Beach, NY 11561

Re: Matter of Sinclair Haberman and Belair Building Company v. Zoning Board of Appeals of the City of Long Beach, et al, Index No. 01138/04.

Dear Corey

The purpose of this letter is to set forth the terms of the retention and engagement of Kudman Trachten Aloe LLP ("KTA") by the City of Long Beach (the "City") to represent the respondent-defendants Zoning Board of Appeals of the City of Long Beach (the "ZBA") and Rocco Morelli, Lenny Torres, Marcel Weber, Michael Fina, Stuart Banschick, Lorraine Divone, Michael Loeonetti as members of the ZBA (collectively the "ZBA Defendants") sued in the above referenced matter.

1. Scope of Retention. The City of Long Beach is retaining KTA to represent the ZBA Defendants, as co-counsel along with you in the above referenced action.

2. Fees and Disbursements. The City of Long Beach agrees to pay our fees and disbursements in accordance with this retainer agreement. Our fees are calculated on an hourly basis billed to tenths of an hour on a monthly basis. Our normal partner rate is \$525 an hour and our associate rate is \$425 an hour. As this is a municipal retainer, we will be discounting our partner rates as follows: \$350 an hour for partner time of counsel, senior attorneys, \$315; senior associates, \$285; junior associates, \$250. We periodically review and adjust our rates and if we do so, we will notify you in advance by written letter. Also, because these rates are discounted, our discounts are contingent upon timely payment of our invoices and if invoices are not paid timely, the rates will revert to full undiscounted rates. We also bill for typical disbursements of law

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New York, New York 10118 - 212-868-1010

firms, which include filing fees, computerized research, photocopies (\$.20 per page), and typical out of pocket disbursements incurred on behalf of our clients. We would anticipate in connection with litigation that there may be larger disbursements such as the cost of process servers, experts, translating services and the like which the firm will arrange to have invoiced directly to you rather than billed through the firm. As this is an appeal, we would anticipate that it would involve the printing cost of the appellate printer. Our invoices are rendered on a monthly basis and due upon receipt. Overdue invoices carry interest at the rate of 9% per annum from the date of the invoice. Invoices are overdue if payment in full is not received before the last day in which they are rendered.

3. Termination The ZBA Defendants, as our client, has the right to terminate our services at any time for any reason. Once we enter a formal appearance before the Court, it will be necessary to make a motion to obtain permission of the Court for us to be relieved. We will terminate our services if (a) there is a failure to make timely payment of our invoices hereunder (b) you fail to cooperate with the representation (c) if there are other grounds requiring or permitting our withdrawal under the New York Rules of Professional Conduct.

4. Cooperation. In order to provide efficient and effective legal services, we expect our clients to fully cooperate with us and provide complete and truthful information of all matters pertaining to the representation. We will be available for communications and will return phone calls promptly (and will provide cell phones so that we can be reached after hours) and expect our clients to similarly cooperate with us. We expect that all materials (including electronically stored information relative to this matter will be preserved as well.

5. Arbitration. New York State has established a Fee Dispute Resolution Program (the "FDRP") for the resolution of certain fee disputes between attorneys and clients. Enclosed herewith are complete copies of: the Standard Written Instructions and Procedures for the Resolution of Fee Disputes Pursuant to Part 137 of the Rules of the Chief Administrator (the "Standard Rules"); and the document entitled "Local Program Rules" which are the written instructions and procedures approved by the Board of Governors of the Attorney-Client Fee Dispute Resolution Program within the First Judicial District of the State of New York which applies to the resolution of any fee dispute between you and the Firm (the "Local Instructions", and together with the Standard Rules, the "FDRP Rules"). You are advised to read the FDRP Rules and I encourage you to ask any questions you may have concerning the FDRP, the FDRP Rules, and the terms of this paragraph prior to executing this Agreement. The parties to this Agreement agree that in the event a dispute should arise as to the firm's fee for legal services or expenses incurred, they will resolve the fee disputes by arbitration conducted pursuant to Part 137 of the Rules of the Chief Administrator of the Court (22 NYCRR), which provides for binding arbitration, except that they agree to be bound by the decision of the arbitrator(s) and agree to waive their rights to reject the arbitrator(s) award by commencing an action on the merits (trial *de novo*) in a court of law within 30 days after the arbitrator'(s) decision has been mailed. By signing this Agreement, the Firm and the Client each acknowledge that they have received and read the FDRP Rules. The Firm and the Client understand that they are not required to agree to waive their right to seek a trial *de novo* under Part 137. This paragraph does

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not foreclose the parties' attempting to resolve any fee dispute at any time through voluntary mediation.

6. Governing Law. This letter agreement is made in the State of New York, and shall be governed by the laws of the State of New York applicable to contracts made and performed in such State, without regard to principles of conflict of laws. Our relationship is also governed by the New York Rules of Professional Conduct, and New York Statement of Client Rights and the New York Statement of Client Responsibilities, which have been promulgated by the New York Office of Court Administration, a copy of which will be provided to you on request.

7. Counterparts. This letter agreement may be executed in counterparts, in which case each counterpart shall be deemed an original thereof. This letter agreement may be returned to us by facsimile, in which case the facsimile version shall be deemed an original thereof.

8. This letter agreement constitutes a valid and binding contract among us, so please read it carefully. If any matter does not accord with our agreement or is in any way not agreeable, kindly let me know as soon as possible. At all times I remain available to speak with you concerning this matter and may be reached at the above address.

Very truly yours,

KUDMAN TRACHTEN ALOE, LLP


By: 

Paul H. Aloe

Agreed to and Accepted

The City of Long Beach

By:


JACK SCHNIRMAN

CITY MANAGER

July 17, 2014

July 15, 2014

Item No. 7
Resolution No. 100/14

The following Resolution was moved by Ms. Adelson
and seconded by Pres. Mandel :

Resolution Authorizing the Retention of Outside Counsel.

WHEREAS, the City desires to retain the services of specialized outside counsel to represent the City in the ongoing matters of Sinclair Haberman and Belair Building, LLC against the City of Long Beach et. al. (Index No. 01138/2004) and Xander Corp. against Sinclair Haberman and the City of Long Beach et. al. (Index No. 14069/2003); and

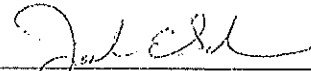
WHEREAS, due to the specific and complex nature of said matters, the City desires to retain the law firm of Wilson Elser Moskowitz Edelman & Dicker LLP, 1133 Westchester Avenue, White Plains, New York 10604, by Robert A. Spolzino, Esq., to represent the City and the City's Building Commissioner, Scott Kemins; and

WHEREAS, the City desires to retain the law firm of Kudman Trachten Aloe LLP, 350 Fifth Avenue, New York, New York 10118, by Paul H. Aloe, Esq., to represent the Zoning Board of Appeals of the City of Long Beach and its members;

NOW, THEREFORE, be it

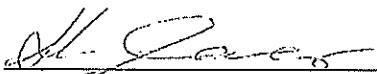
RESOLVED, by the City Council of the City of Long Beach, New York that the City Manager be and he hereby is authorized to retain the law firms of Wilson Elser Moskowitz Edelman & Dicker LLP, 3 Gannett Drive, White Plains, New York 10604 and Kudman Trachten Aloe LLP, 350 Fifth Avenue, New York, New York 10118 to defend the City and City officials and to perform legal 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:



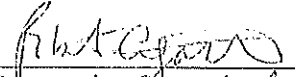
City Manager

APPROVED AS TO FUNDS:



City Comptroller

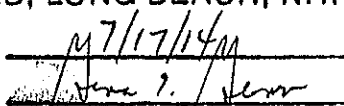
APPROVED AS TO FORM & LEGALITY:



Corporation Counsel - Acting

VOTING:

- Council Member Adelson - AYE
- Council Member Framo - AYE
- Council Member Goggin - AYE
- Council Member Torres - AYE
- President Mandel - AYE

A TRUE COPY
DATED, LONG BEACH, N.Y.


Dep. CITY CLERK