

Kaltman

DEVELOPMENT GROUP

Architect
CASp #739
general contractor
528981
construction manager
forensic services

TERMS OF ENGAGEMENT TO PROVIDE ACCESSIBILITY CONSULTING SERVICES **BY A CERTIFIED ACCESS SPECIALIST (CASp)**

DATE OF ENGAGEMENT AGREEMENT:

BETWEEN: _____ (OWNER) AND

CASp: I. LAWRENCE KALTMAN, AIA, CASp ____ (CASp)

FOR THE FOLLOWING CLIENT/PROJECT/CASE: [PROVIDE PROJECT NAME, LOCATION AND ANY OTHER INFORMATION]

THE OWNER AND CASp AGREE AS FOLLOWS: [DEFINE THE SCOPE OF THE ASSIGNMENT]

IN RESPONSE TO THE OWNER'S REQUEST, CASp SHALL PERFORM A SURVEY OF THE SUBJECT PROPERTY, ON-SITE, FOR A TITLE III FACILITY TO DETERMINE ITS CONFORMANCE WITH TITLE 24, CHAPTER 11B OF THE 2016 (2013) CALIFORNIA BUILDING CODE (CBC 2016) AND THE AMERICANS WITH DISABILITIES ACT, ADA 2010. THE PURPOSE OF THE CASp REPORT IS TO PROVIDE A VERIFICATION OF THE FACILITY'S COMPLIANCE, OR LACK OF COMPLIANCE BASED UPON A VISUAL OBSERVATION OF THE SITE. THE FIELD SURVEY WILL RESULT IN THE DELIVERY OF A REPORT OF CASp'S OBSERVATIONS, A DETERMINATION INDICATING THE FACILITY'S PRESENT LEVEL OF COMPLIANCE AND A DETERMINATION OF REQUIRED BARRIER REMOVAL IN ACCORDANCE WITH THE MOST RECENT EDITION OF THE ARCHITECTURAL BARRIERS ACT.

THE SCOPE OF WORK SHALL BE:

1. **PRE-EVALUATION INQUIRY** TO OBTAIN INFORMATION FROM THE OWNER;
2. **RESEARCH PRIOR TO ON-SITE EVALUATION** AS NEEDED (AN ADDITIONAL FEE MAY BE REQUIRED)
3. **RESEARCH IN RESPONSE TO ON-SITE EVALUATION**
4. **ON-SITE EVALUATION**; TYPE TO BE CHOSEN BY CLIENT:

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- a. CRASCA REPORT: PROVIDES STATUS OF "QUALIFIED DEFENDANT" IN SUITS BROUGHT AFTER THE CASp REPORT HAS BEEN COMPLETD. CRASCA = CONSTRUCTION RELATED ACCESSIBILITY STANDARDS COMPLIANCE ACT.
 - B. NON-CRASCA REPORT: SIMPLY A SURVEY OF FACILITY CONDITIONS AS RELATED TO ACCESSIBILITY WITH NO SPECIAL STATUS INURING TO THE FACILITY OWNER.
5. **REPORT OF FINDINGS**:
- A. A FIELD SURVEY OF THE SUBJECT FACILITY TO DEFINE AND DOCUMENT EXISTING COMPLIANT AND NON-COMPLIANT CONDITIONS
 - B. PHOTO GALLERY OF COMPLIANT AND NON-COMPLIANT CONDITIONS
 - C. DETERMINATION OF READILY ACHIEVABLE BARRIER REMOVAL
 - D. A RECORD OF THE NON-COMPLIANT ELEMENTS FOUND ON THE SITE OR A DETERMINATION OF FULL COMPLIANCE, AS THE CONDITIONS OF THE FACILITY WILL DICTATE
6. **ISSUANCE OF A DISABILITY ACCESS INSPECTION CERTIFICATE** IF THE REPORT IS PREPARED IN ACCORDANCE WITH CRASCA REQUIREMENTS
7. **ADDITIONS TO THE SCOPE AS REQUESTED BY CLIENT** ; EACH OF THE ITEMS LISTED BELOW MAY BE CHOSEN BY THE OWNER AS ADDITIONAL SERVICES; SEPARATE PROPOSALS WILL BE SUBMITTED TO THE OWNER FOR THOSE CHOSEN. ANY DESIGN AND/OR CONSTRUCTION DOCUMENT SERVICES WILL BE ACCOMPLISHED BY KALTMAN DEVELOPMENT GROUP (KDG) AS A LICENSED ARCHITECT. ALL CASp RELATED SERVICES WILL BE ACCOMPLISHED BY THE CASp:
- A. **CASp**: ASSIST THE OWNER IN CREATING A SCHEDULE FOR MAKING IMPROVEMENTS, BY NON-CONFORMING ITEM, DEFINING DURATION TO COMPLETION;
 - B. **KDG**: PROVIDE ARCHITECTURAL DESIGN AND CONSTRUCTION DOCUMENTATION FOR THE IMPROVEMENTS TO BE ACCOMPLISHED;
 - C. **KDG**: PROVIDE ARCHITECTURAL SERVICES TO SUBMIT, PROCESS AND OBTAIN ANY REQUIRED BUILDING AND/OR ENGINEERING PERMITS-WITH ALL PERMIT FEES AND OTHER JURISDICTIONAL FEES TO BE PAID BY OWNER;
 - D. **KDG**: PROVIDE ARCHITECTURAL SERVICES TO PRODUCE PROJECT BID DOCUMENTS AND ASSIST THE OWNER IN ANALYSIS OF BIDS RECEIVED;
 - E. **CASp**: MONITOR IMPROVEMENTS MADE ACCORDING TO THE SCHEDULE OF IMPROVEMENTS;
 - F. **CASp**: FOLLOW-UP REPORT AFTER ALL IMPROVEMENTS HAVE BEEN MADE, ISSUED AS A NEW CASP REPORT;

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- G. **CASp** PARTICIPATE IN FUTURE LEGAL ACTIONS AS A CONSULTANT AND/OR EXPERT WITNESS ON BEHALF OF THE CLIENT IN ONE OR MORE OF, BUT NOT LIMITED TO, THE FOLLOWING TASKS:
- I. SITE VISITS,
 - II. MEETINGS WITH OTHER EXPERTS, ATTORNEYS, INSURANCE ADJUSTERS, ETC.,AS REQUESTED,
 - III. DOCUMENT REVIEW,
 - IV. PREPARATION OF PHOTO LOG(S), PREPARATION OF REPORTS AS REQUIRED,
 - V. PREPARATION FOR AND ATTENDANCE AT MEDIATIONS AND MEDIATION RELATED MEETINGS AS REQUESTED,
 - VI. PREPARATION FOR AND ATTENDANCE AT DEPOSITIONS,
 - VII. PREPARATION FOR AND ATTENDANCE AT TRIAL TO GIVE TESTIMONY,
 - VIII. AID ATTORNEY IN TRIAL PREPARATION,
 - IX. ADDITIONS TO THIS TASK SCOPE AS REQUESTED BY CLIENT.

ARTICLE 1 CASp's RESPONSIBILITIES:

THE CASp SHALL PROVIDE ACCESSIBILITY CONSULTING SERVICES. SUCH SERVICES SHALL BE PERFORMED IN A MANNER CONSISTENT WITH PROFESSIONAL SKILL AND CARE REQUIRED OF ACCESS SPECIALISTS CERTIFIED BY THE STATE OF CALIFORNIA.

NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE CONCERNING WORK PERFORMED UNDER THESE TERMS AND CONDITIONS, INCLUDING FINDINGS, RECOMMENDATIONS, SPECIFICATIONS, OR PROFESSIONAL ADVICE. KDG WILL PROCEED DILIGENTLY WITH THE ASSIGNMENT AND WILL PROVIDE A REPORT(S) IN A TIMELY MANNER, EXCEPT FOR DELAYS OCCASIONED BY FACTORS BEYOND ITS CONTROL, OR WHICH WERE NOT REASONABLY FORESEEABLE, OR WHICH WERE INITIATED BY CLIENT.

THE CASp SHALL PERFORM THE FOLLOWING TASKS RELATIVE TO THIS FACILITY:

1. CONDUCT A FACILITY VISIT, AT A DATE TO BE DETERMINED, TO VERIFY THE FACILITY'S ACCESSIBILITY TO PERSONS WITH DISABILITIES AS MANDATED BY THE AMERICANS WITH DISABILITIES ACT STANDARDS (ADAS) FOR TITLE III FACILITIES AND TITLE 24, SECTION 11B OF THE CALIFORNIA BUILDING CODE (CBC) 2016 (2013) OR CODE APPLICABLE TO THE SUBJECT FACILITY.

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2. PREPARE A WRITTEN REPORT WITH PHOTOGRAPHS OF FACILITY CONDITIONS, CONFORMING AND NON-CONFORMING, OF TECHNICAL BARRIERS TO ACCESS. TWO (2) COPIES OF THE COMPLETE REPORT ARE INCLUDED AS PART OF THE AGREEMENT.
3. THE METHOD AND MEANS OF IMPLEMENTATION OF THE REMOVAL OF NON-CONFORMING CONDITIONS AND BARRIERS SHALL BE AT THE SOLE DISCRETION OF THE OWNER. THE OWNER SHALL INDEMNIFY THE CASp AGAINST ANY AND ALL CLAIMS ARISING FROM OWNER'S FAILURE TO MEET THE MINIMUM GUIDELINE STANDARDS (ADAS 2010), APPLICABLE CODES AND CALIFORNIA TITLE 24, CHAPTER 11B CBC 2016 (CBC 2013).

ARTICLE 2 OWNER'S RESPONSIBILITIES:

1. THE OWNER SHALL PROVIDE ACCESS TO THE SITE AND ITS BUILDINGS AT ANY REASONABLE TIME REQUESTED BY THE CASp.
2. THE OWNER SHALL PROVIDE THE CASp WITH COPIES, AT OWNER'S COST, OF ANY AS-BUILT DRAWINGS AND OTHER RELEVANT DOCUMENTS OWNER MAY HAVE.
3. THE CASp, AT THE OWNER'S REQUEST, MAY CONDUCT RECORDS RESEARCH AT THE OFFICES OF THE JURISDICTION OF RECORD, TITLE COMPANIES, COUNTY RECORDER'S OFFICE, ETC.

ARTICLE 3 USE OF CASp'S OR KDG'S DOCUMENTS

CASp DOCUMENTS: UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL CASp REPORTS, RECOMMENDATIONS, PROCEDURES AND OTHER INFORMATION PROVIDED TO THE CLIENT UNDER THESE TERMS AND CONDITIONS ARE THE JOINT PROPERTY OF THE CLIENT AND THE CASp AND MAY BE USED WITHOUT RESTRICTION BY EITHER.

KDG DOCUMENTS: PROPRIETARY DOCUMENTS CONCEIVED AND PREPARED BY KDG FUNCTIONING AS A LICENSED ARCHITECT, INCLUDING THOSE IN ELECTRONIC FORM, ARE INSTRUMENTS OF SERVICE FOR USE SOLELY WITH RESPECT TO THIS PROJECT. KDG SHALL RETAIN ALL COMMON LAW, STATUTORY AND OTHER RESERVED RIGHTS, INCLUDING THE COPYRIGHT. THE OWNER SHALL NOT REUSE OR PERMIT THE REUSE OF THE KDG'S DOCUMENTS EXCEPT BY MUTUAL AGREEMENT IN WRITING OR BY COURT ORDER.

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ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT:

WORK MAY BE TERMINATED UPON RECEIPT BY CASp AND/OR KDG OF TWO (2) DAYS WRITTEN NOTICE FROM OWNER. CASp AND/OR KDG SHALL BE COMPENSATED FOR ANY EXPENSE OF TERMINATION INCLUDING BUT NOT LIMITED TO THE COST OF OTHER CONSULTANTS, LAB FEES, OTHER FEES AND TIME SPENT IN COMPLETING SUCH ANALYSES, RECORDS, AND REPORTS AS ARE REASONABLY NECESSARY TO PROTECT ITS PROFESSIONAL REPUTATION AND ADEQUATELY DOCUMENT THE WORK PERFORMED THROUGH TERMINATION. IN SUCH EVENT, KDG SHALL BE ENTITLED TO BILL AT THE HOURLY RATES DEFINED IN THESE TERMS AND CONDITIONS FOR THE TIME REQUIRED TO EXECUTE AN ORDERLY TERMINATION OF THE PROJECT. CASp AND/OR KDG MAY ALSO TERMINATE THIS AGREEMENT PURSUANT TO THE FOREGOING.

ARTICLE 5 MISCELLANEOUS PROVISIONS:

1. IF CASp AND/OR KDG IS ENGAGED AS AN EXPERT WITNESS ON BEHALF OF THE OWNER, **CASp AND/OR KDG MUST APPROVE ANY EXPERT DESIGNATION PRIOR TO THAT DESIGNATION BEING FILED WITH THE COURT HAVING JURISDICTION.**
2. KDG AND/OR THE CASp WILL HAVE NO LIABILITY IN THE EVENT OF AN UNFAVORABLE RESULT FOR CLIENT, UNLESS THERE HAS BEEN GROSS NEGLIGENCE ON THE PART OF CASp AND/OR KDG. LIABILITY OF CASp AND/OR KDG SHALL BE LIMITED TO THE GROSS AMOUNT INVOICED AND RECEIVED FROM CLIENT IN THE PERFORMANCE OF THE WORK DESCRIBED HEREINABOVE. CLIENT ACKNOWLEDGES THAT BUT FOR THE FOREGOING LIMITATION ON LIABILITY, CASp AND/OR KDG WOULD NOT UNDERTAKE THIS ASSIGNMENT.
3. SPECIALIZED FORMATS, SOFTWARE, METHODOLOGIES, OR OTHER PRODUCTS DEVELOPED BY CASp AND/OR KDG, ARE AND WILL REMAIN THE PROPERTY OF CASp AND/OR KDG. ANY USE THEREOF FOR SUBSEQUENT PROJECTS WITHOUT THE PRIOR WRITTEN CONSENT OF CASp AND/OR KDG IS STRICTLY PROHIBITED.
4. **IN THE EVENT OF ANY DISPUTE OR LITIGATION REGARDING THE ENFORCEMENT OR INTERPRETATION OF ANY PROVISION OF THESE TERMS OF ENGAGEMENT, THE PREVAILING PARTY WILL BE ENTITLED TO RECOVER FROM THE OTHER PARTY ALL REASONABLE EXPENSES, INCLUDING ATTORNEYS' FEES AND COSTS, IN ADDITION TO ANY OTHER RELIEF GRANTED, WHETHER OR NOT SUIT IS BROUGHT OR JUDGMENT IS RENDERED.**

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ARTICLE 6 PAYMENTS AND COMPENSATION TO THE CASp

1. **FLAT FEE:** (INSERT FLAT FEE AND ANY TERMS HERE USING THE SCOPE OF WORK ITEMS LISTED ON PAGES 1-3)

2. **RATES AND CHARGES:**

- A. A RETAINER FEE OF **ONE THOUSAND** DOLLARS (\$1,000) IS PAYABLE IN ADVANCE, AND WILL BE APPLIED TO THE FINAL INVOICE ONLY, WITH ANY UNUSED PORTION RETURNED WITH A FINAL ACCOUNTING.
- B. **CASp RATES: WORK WILL BE PERFORMED ON A TIME AND EXPENSE BASIS. ANALYSIS, PREPARATION TIME, AND MEETINGS ARE BILLED AT \$235 PER HOUR. DEPOSITION TESTIMONY OR TESTIMONY IN COURT DURING TRIAL WILL BE BILLED AT \$450.00 PER HOUR.**
- C. **KDG RATES: WORK WILL BE PERFORMED ON A TIME AND EXPENSE BASIS. ANALYSIS, PREPARATION TIME, AND MEETINGS ARE BILLED AT \$235 PER HOUR. DEPOSITION TESTIMONY OR TESTIMONY IN COURT DURING TRIAL WILL BE BILLED AT \$450.00 PER HOUR.**

3. **REIMBURSIBLE EXPENSES:**

- a. STANDARD COSTS OF OFFICE OPERATION SUCH AS TELEPHONE CALLS, FACSIMILES, AND SMALL NUMBERS OF PHOTOCOPIES WILL NOT BE BILLED UNLESS THERE IS AN EXTRAORDINARY REQUIREMENT. THE COST OF SUPPLYING THE OWNER WITH TWO (2) COMPLETE COPIES OF THE CASp REPORT ARE INCLUDED AS PART OF THE AGREEMENT. ANY ADDED COPIES WILL BE BILLED AT COST PLUS 10%.
- b. **REIMBURSABLE EXPENSES ARE BILLED AT COST PLUS 10% AND INCLUDE BUT ARE NOT LIMITED TO PARKING COSTS, REPRODUCTION COSTS AND OTHER EXTRAORDINARY DIRECT EXPENSES.**

4. **TERMS OF PAYMENT:**

- A. **STATEMENTS WILL BE PRESENTED AT THE BEGINNING OF EACH MONTH AND ARE DUE IMMEDIATELY UPON RECEIPT. OUTSTANDING BALANCES PAST DUE OVER THIRTY DAYS ARE SUBJECT TO A DELINQUENCY CHARGE OF ONE- PERCENT PER MONTH UNTIL PAID.** FAILURE BY THE CASp OR KDG TO ADD SAID DELINQUENCY CHARGE WILL NOT PRECLUDE ENFORCEMENT AT A LATER DATE.

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- B. CASp AND/OR KDG, WITHOUT LIABILITY, MAY WITHHOLD DELIVERY OF REPORTS AND OTHER DATA AND MAY SUSPEND PERFORMANCE OF ITS OBLIGATIONS TO CLIENT PENDING FULL PAYMENT OF ALL CHARGES INCURRED, BILLED OR YET-TO-BE BILLED. IF CASp AND/OR KDG FAILS TO SO SUSPEND PERFORMANCE, SUCH FAILURE WILL NOT PREJUDICE ITS RIGHTS TO DO SO AT ANY TIME IN THE FUTURE.
- c. ALL OUTSTANDING INVOICES MUST BE PAID BEFORE KDG AND/OR THE CASp WILL MAKE A DEPOSITION OR COURT APPEARANCE ON BEHALF OF THE SUBJECT CASE/PROJECT. KDG AND/OR THE CASp MAY WAIVE THIS REQUIREMENT AT IT'S OR THEIR DISCRETION. FAILURE TO INVOKE THIS PROVISION AT ANY TIME SHALL NOT PREVENT OR PRECLUDE KDG AND/OR THE CASp FROM INVOKING IT AT ANY TIME.***
- D. CLIENT SHALL PAY ALL COLLECTION EXPENSES, RELATED ATTORNEYS' FEES, AND ANY LEGAL COSTS INCURRED IN COLLECTION.
- E. CLIENT AGREES THAT COMPENSATION FOR CASp AND/OR KDG SERVICES IS NOT CONTINGENT UPON THE PAYMENT TO, OR PERFORMANCE OF, ANY OTHER PARTIES, NOR IS COMPENSATION CONTINGENT UPON THE RESULTS OF INVESTIGATIONS. FURTHERMORE, COMPENSATION IS NOT CONTINGENT UPON THE OUTCOME OF ANY LEGAL CASE(S), SUBSEQUENT COMMERCIAL DECISIONS, OR OBLIGATIONS TRANSFERRED TO NON-CONTRACTING PARTIES.***
- f. CLIENT AND CASp AND/OR KDG AGREE AND ACKNOWLEDGE THAT FROM TIME TO TIME THERE MAY BE OTHER ENTITIES ENTERING THE CASE/PROJECT THAT SHARE THE RESPONSIBILITY TO PAY FOR CASp OR KDG'S WORK IN ACCORDANCE WITH THIS AGREEMENT. CLIENT AGREES THAT IT WILL BE RESPONSIBLE TO INFORM THE CASp OR KDG OF SUCH OTHER RESPONSIBLE ENTITIES AND PROVIDE APPROPRIATE INFORMATION TO CASp AND/OR KDG FOR PURPOSES OF CONTACT AND INVOICING. CLIENT AND CASp AND/OR KDG AGREE THAT CASp AND/OR KDG WILL MAKE ADJUSTMENTS IN ITS MONTHLY INVOICING AS CLIENT MAKES CASp AND/OR KDG AWARE THAT OTHER ATTORNEYS, INSURANCE COMPANIES OR OTHER RESPONSIBLE ENTITIES BECOME A PART OF THE CASE/PROJECT WHICH IS THE SUBJECT OF THIS AGREEMENT. CLIENT AND CASp AND/OR KDG ADDITIONALLY AGREE THAT CLIENT SHALL BE RESPONSIBLE TO PAY FOR ANY INVOICE THAT CASp AND/OR KDG HAS FORWARDED TO ANY OTHER SUCH RESPONSIBLE ENTITY THAT HAS ENTERED THE CASE/PROJECT WHEN

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SUCH INVOICE(S) HAVE BEEN UNPAID FOR A PERIOD OF NINETY (90) DAYS AFTER SUBMISSION TO SUCH OTHER RESPONSIBLE ENTITY.

Date: _____

I. LAWRENCE KALTMAN, AIA, CASp FOR KALTMAN DEVELOPMENT GROUP

RECEIPT OF TERMS OF ENGAGEMENT IS ACKNOWLEDGED AND THE TERMS THEREOF ARE ACCEPTED AND AGREED TO:

BY:

DATE

ENGAGE.DOC REV. TO 2016.12.06 ILK