

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
HKA GLOBAL, LLC
AND
CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the “Effective Date”), by and between the City of Duluth, hereinafter referred to as “City”, and HKA Global, LLC, located at One Commerce Square, 2005 Market Street, 8th Fl., Philadelphia, PA 19103, hereinafter referred to as “Service Provider” for the purpose of rendering services to the City.

WHEREAS, the City desires to utilize Service Provider’s professional services to provide accounting services relating to *Moline Machinery, LLC and Glass Merchant, Inc., d/b/a Walsh Windows on behalf of themselves and all others similarly situated v. City of Duluth*, Case No. 69DU-CV-21-1668, a class action law suit against the City; and

WHEREAS, Service Provider has represented itself as qualified and willing to perform the services required by the City.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

I. Services

Service Provider will perform expert accounting services with respect to the interest of the City relating to *Moline Machinery, LLC and Glass Merchant, Inc., d/b/a Walsh Windows on behalf of themselves and all others similarly situated v. City of Duluth*, Case No. 69DU-CV-21-1668, as described in the work plan and fee estimate attached hereto as Exhibit A and incorporated into this agreement (collectively, the “Services”).

II. Fees

It is agreed between the parties that Service Provider’s hourly rate shall be as follows:

- For Partner David M. Duffus, CPA/ABV/CFF/CFE - \$595 per hour;
- For Director Drew Hauge, \$495 per hour; and
- For a consultant, \$355 per hour.

Effective January 1 of each calendar year, all such hourly rates will increase by five percent

(5%). Service Provider also will be entitled to reimbursement of reasonable expenses, provided the total cost to the City for fees and expenses will not exceed the sum of Eighty Thousand Dollars (\$80,000), payable from City Fund: 610-036-1654-5304. The Service Provider will not incur additional fees and expenses without prior written authorization from the City. All bills for services rendered shall be submitted monthly to the City Attorney. Such billings shall be accompanied by documentation as shall reasonably be requested by the City Attorney.

The City agrees to pay Service Provider invoices within thirty (30) calendar days of issuance. In the event of a good faith reasonable dispute, the City agrees to pay all undisputed portions of the invoice within the same time. Acceptance of any partial payment shall not constitute a waiver by Service Provider of any rights or otherwise affect its ability to collect the unpaid portion of any invoice, and Service Provider specifically reserves its rights to collect any remaining amount due in such circumstances. The City's payment obligation hereunder shall not be contingent on or modified by the findings or conclusions reached by Service Provider, or by the outcome of the underlying matter. Service Provider reserves the right to suspend performance without penalty in the event it does not receive timely payment of its invoices. Service Provider shall not be obligated (i) to deliver any final work product, (ii) to provide any declaration, presentation, or testimony, or (iii) to resume work in the event of a suspension, until it receives payment for all Services performed.

III. General Terms and Conditions

1. Amendments

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and Service Provider only upon being reduced to writing and signed by a duly authorized representative of each party.

2. Assignment

David M. Duffus shall assume primary responsibility for delivering the professional services required by this Agreement. Service Provider represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of

the City Attorney.

3. Agreement Period

The term of this Agreement shall commence on the Effective Date and performance shall be completed by December 31, 2025, unless terminated earlier as provided for herein. Either party may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Service Provider under this Agreement shall become the property of the City upon Service Provider's receipt of payment, and Service Provider shall promptly deliver the same to the City at that time. Service Provider shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach of Service Provider, the City shall retain all other remedies available to it.

4. Data and Confidentiality, Records and Inspection

- a. The City agrees that it will make available all pertinent information, data and records under its control for Service Provider to use in the performance of this Agreement, or to assist Service Provider wherever possible to obtain such records, data and information.
- b. All reports, data, information, documentation and material given to or prepared by Service Provider pursuant to this Agreement will be confidential and will not be released by Service Provider without prior authorization from the City, except as otherwise may be required by legal process.
- c. Prior to the City disclosing to Service Provider any confidential or private data that may be subject to special treatment under this provision , it shall advise Service Provider and identify the data with specificity. Service Provider agrees to abide by the applicable provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 with respect to such data so identified and provided. Service Provider understands that all of the data created, collected, received, stored, used maintained or disseminated by Service Provider in performing those

functions that the City would perform as a government entity, is subject to the requirements of Chapter 13 and Service Provider must comply with those requirements as if it were a government entity. This does not create a duty on the part of Service Provider to provide the public with access to public data if the public data is available from the City, except as required by the terms of this agreement. For clarity, the expert accounting services to be provided by Service Provider under this Agreement are not considered to be services that the City would perform as a government entity.

- d. Records shall be maintained by Service Provider in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- e. Service Provider will ensure that all costs shall be supported by properly executed time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- f. Service Provider shall be responsible for furnishing to the City records, data and information as the City may reasonably require pertaining to matters covered by this Agreement.
- g. Service Provider shall ensure that at any time during normal business hours with at least 24 hours' advance written notice and as often as is reasonably necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement. Service Provider will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, and other data relating to all matters covered by this Agreement.

5. Service Provider Representation and Warranties

Service Provider represents and warrants that:

- a. Service Provider and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. Service Provider and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the City and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type. Nothing in this Agreement is intended to, nor shall it be deemed to, establish a fiduciary relationship among the parties.
- c. The City acknowledges that Service Provider opinions and work product are dependent in part on the documents and information the City provides, and that Service Provider shall not be responsible for any claims to the extent resulting from inaccurate or incomplete City documents or information.
- d. Service Provider makes no representations or guarantees regarding (i) the admissibility of its opinions, findings, reports or testimony in any legal proceeding, or (ii) the outcome of the matter in connection with which they are provided.
- e. Service Provider has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Service Provider will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.
- f. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Service Provider is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Service Provider contrary to the terms of any instrument or agreement. There is no litigation pending or to the best of the Service Provider's knowledge threatened against the

Service Provider affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the Service Provider to perform its obligations hereunder.

- g. The Service Provider will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

6. Independent Contractor

- a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Service Provider as an agent, representative or employee of the City for any purpose or in any manner whatsoever. Service Provider and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Service Provider's employees while so engaged, and any and all claims whatsoever on behalf of Service Provider's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Service Provider's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A benefits or contribution. Further, City shall in no way be responsible to defend, indemnify or save harmless Service Provider from liability or judgments arising out of Service Provider's intentional or negligent acts or omissions of Service Provider or its employees while performing the work specified by this Agreement.
- b. The parties do not intend by this Agreement to create a joint venture or

joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

- c. This Agreement is made solely for the benefit of the parties to this Agreement. Service Provider disclaims any responsibility, liability, or duty of care to others not a party to this Agreement based upon its Services or upon any work product, presentation, testimony or advice it provides hereunder. The parties do not intend to create any rights hereunder, either in law or in equity, in any person or entity not a signatory to this Agreement, nor shall any such person or entity be deemed a third-party beneficiary of this Agreement.

7. Indemnity and Limitation of Liability

Service Provider shall indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to reasonable attorneys' fees and expenses, in connection with (a) any third-party claims to the extent on a comparative fault basis resulting from the Service Provider's (i) breach of this agreement or (ii) its negligence or misconduct or that of its agents or contractors in performing the Services hereunder, or (b) any claims by Service Provider's employees or contractors related to their employment or contractual arrangements with Service Provider. This Section shall survive the termination of this Agreement for any reason.

Notwithstanding any provision of this Agreement or its attachments to the contrary, and except for Service Provider's indemnity obligations immediately above, the total liability of Service Provider (and its members, directors, officers, employees, agents, subconsultants, subsidiaries, affiliates, successors, assigns, and parent or related entities)(collectively the "Service Provider Parties") to the City (and all of its elected officials, employees, agents, subconsultants, agencies, departments, and anyone claiming by or through any of them)(collectively the "City Parties") arising out of or related to this Agreement or the Services, whether such liability is based in contract, tort, strict liability or otherwise, shall not exceed in the aggregate two times (2x) the total professional fees paid to

Service Provider hereunder.

In no event shall the Service Provider Parties be liable to the City Parties or any other person or entity for (i) lost or diminished revenues or profits, losses by reason of delay, lost data, lost business, or loss of business opportunities or goodwill, or (ii) any incidental, special, punitive, exemplary, indirect, speculative, consequential or other similar damages of any kind, arising out of or related to this Agreement or the Services, whether such damages or losses are based in contract, tort, strict liability or otherwise, and even if such damages or losses could have been foreseen or prevented.

To the extent this limitation of liability conflicts with any other provision of this Agreement or its attachments, such other provision(s) shall be deemed to be amended to the extent required to make it consistent with the limitation of liability in this Section. Nothing in this Agreement is intended to limit liability that cannot be limited under controlling law. The provisions of this Section shall survive the expiration or termination of this Agreement.

8. Insurance

Service Provider shall obtain and maintain for the Term of this Agreement the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.

- a. Professional Liability Insurance in an amount not less than **\$1,500,000** Single Limit; provided further that in the event the professional malpractice insurance is in the form of “claims made,” insurance, 60 days’ notice prior to any cancellation or modification shall be required; and in such event, Service Provider agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said “claims made” insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.
- b. Upon request and to the extent applicable, Service Provider shall also provide evidence of Statutory Minnesota Workers’ Compensation

Insurance.

- c. Upon request, a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.

9. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Service Provider's interests and liabilities.

10. **Notices**

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

City: Jessica J. Fralich
City of Duluth Attorney's Office
411 W First Street
City Hall Room 440
Duluth MN 55802

Service Provider: HKA Global, LLC
One Commerce Square
2005 Market Street, 8th Fl.
Philadelphia, PA 19103
Attn: David M. Duffus, Partner

11. **Civil Rights Assurances**

Service Provider, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.

- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

12. **Laws, Rules and Regulations**

Service Provider agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

13. **Applicable Law**

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

14. **Force Majeure**

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

15. **Severability**

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

16. **Entire Agreement**

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

17. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in “portable document format” (“.pdf”), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH

By: _____
Mayor

Attest:

By: _____
City Clerk
Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

HKA GLOBAL, LLC

By: _____
David M. Duffus, Partner

Date: _____

Exhibit A

Moline Machinery, LLC v. City of Duluth HKA Workplan and Fee Estimate					
	Professional Level	Partner	Director	Consultant	Total
	Hourly Rate	\$ 595	\$ 495	\$ 355	
	Estimated Hours:				
Phase I - Expert Rebuttal Report					
Review Case Background Materials		2	3	3	8
Review Opposing Expert Report		2	3	3	8
Analyze Case Materials Relied Upon By Opposing Expert		2	8	16	26
Prepare Rebuttal Report Outline And Discuss With Counsel		1	4	-	5
Draft Rebuttal Report And Appendices		8	24	16	48
Review Rebuttal Report With Counsel And Finalize		12	12	-	24
Estimated Phase I Hours		27	54	38	119
Estimated Phase I Fees		16,065	26,730	13,490	56,285
Phase II - Trial Preparation And Testimony					
Trial Preparation		16	8	2	26
Trial Attendance And Testimony		16	-	-	16
Estimated Phase II Hours		32	8	2	42
Estimated Phase II Fees		19,040	3,960	710	23,710
Total Estimated Hours		59	62	40	161
Total Estimated Fees		\$ 35,105	\$ 30,690	\$ 14,200	\$ 79,995

Note:

Estimate is based on information provided as of January 23, 2024 and is subject to revision. This estimate should not be construed as a fixed fee or not-to-exceed amount.