

CLEVELAND PUBLIC LIBRARY

Finance Committee

June 23, 2015

**RESOLUTION TO ENTER INTO AGREEMENTS FOR
LEGAL SERVICES WITH THOMPSON HINE**

WHEREAS, The Board of Trustees of the Cleveland Public Library has authorized the Library Administration to proceed with the Main Library Consolidation Phase 2 Construction Project; and

WHEREAS, On May 19, 2015, the Board also authorized the Library Administration to manage the project with a construction manager at risk project delivery method, and directed the Library to follow the selection process pursuant to Ohio Revised Code Section 9.334, et seq.; and

WHEREAS, The construction manager at risk selection process involves issuing a Request for Qualifications, establishing an evaluation committee and evaluation criteria, reviewing and ranking proposals, issuing Requests for Pricing and Technical proposals to the top ranked firms, preparing the proposed construction manager at risk contract and general conditions, interviewing all top ranked firms, establishing evaluation criteria, and ranking the short listed firms. Upon final selection of a construction manager at risk by the Board, a contract must be negotiated, and after design is completed, a Guaranteed Maximum Price must be negotiated and amendment to the contract entered into; and

WHEREAS, Due to the complexity of the construction manager at risk selection process, the Chief Legal Officer has sought out the legal assistance and counsel of Thompson Hine. Under the direction of Jeff Appelbaum, one of the most preeminent construction lawyers in the country, Thompson Hine has assigned two construction attorneys to this project who have drafted all the required documentation necessary for the selection process and have provided legal advice with regard to the process so far. The Chief Legal Officer desires to continue to engage the services of Thompson Hine during contract negotiations and negotiation of the Guaranteed Maximum Price after design has been completed; and

WHEREAS, Thompson Hine has agreed to provide all the above services plus assistance with regard to an insurance and risk management program for the project, for a fixed fee of \$37,500 plus reimbursables in an amount not-to-exceed \$1,000, for a total contract amount of \$38,500; now therefore be it

RESOLVED, That the Board of Library Trustees authorizes the Director or the Legal Counsel to enter into an agreement with Thompson Hine to provide legal services in connection with the Main Library Consolidation Phase 2 Construction Project as described in this Resolution, in an amount not-to-exceed \$38,500, which expenditure shall be charged to the General Fund Account 11400053-53710 (Professional Services), and to execute such other instruments or documents as may be necessary or appropriate to effectuate the terms of this Resolution, subject to the approval of the Chief Legal Officer.

June 17, 2015

By E-mail and Regular U.S. Mail

Joyce M. Dodrill, Esq.
Chief Legal Officer
Cleveland Public Library
325 Superior Avenue
Cleveland, OH 44114

Re: Engagement of Thompson Hine LLP
Louis B. Stokes Renovation Project

Dear Joyce:

On behalf of Thompson Hine LLP, I am writing to thank you for the opportunity to represent the Cleveland Public Library in the matter described below. At the outset of any new matter, we believe it is important to have a mutual understanding of how we will work together, and we want to describe our intentions in this letter. We need to confirm with you the identity of our client and the scope and nature of the services you have asked Thompson Hine to provide (including any limitations in that regard) and to agree with you regarding the terms under which we will provide our services.

Thompson Hine uses this relatively standard form letter to ensure that all of our clients receive comparable information regarding new engagements. If you have any questions about this engagement letter, or if you would like to discuss possible modifications, please call me as soon as possible.

Client and Scope of Services

You are engaging Thompson Hine to represent the Cleveland Public Library in connection with the Louis B. Stokes Renovation Project. To that end, we will consult with you regarding formation of the project delivery and risk management system for the Project; assist with preparation of, or comment upon, RFQ and RFP solicitation documents; prepare design and construction agreements and related documents; review and comment upon insurance and risk management program; prepare RFQ comparison matrix; provide advice and counsel with respect to construction manager selection and provide services leading to finalization of negotiations and completion of the contracting process.

We have agreed that our engagement is limited to performing services as described above. Our acceptance of this engagement does not involve an undertaking to represent Cleveland Public Library's interests in any other matter. We may agree with you to expand the scope of our representation, provided that any such change is confirmed in writing. To the extent we do expand the scope, our services will be subject to the terms and conditions established in this letter.

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Conflicts of Interest

We have conducted an internal check of our records to determine whether representing you in this engagement would raise an ethical conflict of interest as to one or more of our existing clients. It appears that no such conflict now exists. However, Thompson Hine represents many other entities and individuals; it is possible that while we are representing you, some of our present or future clients will have disputes or transactions with Cleveland Public Library. In particular, it is possible that in the future, one or more of our clients may become involved in the role of construction manager or subcontractor to the construction manager, as those positions have not yet been assigned. If, in the future, a conflict with the interests of another client arises, we will address the conflict with you in a manner consistent with our obligations under the applicable Rules of Professional Conduct. In circumstances in which the Rules relating to conflicts dictate that we do not represent the other client, we will not do so. In circumstances in which the Rules permit you, as a client, to waive the conflict, we may solicit a waiver from you and the other affected clients. In any event, we agree that we will not represent any other client with respect to the Louis B. Stokes Renovation Project. Should a conflict arise in the future with the Project, we will seek a waiver and agree to solely represent the interests of the Cleveland Public Library with respect to the Project.

Fees and Charges

In connection with this engagement, we have agreed to charge for our services on the basis of a fixed fee in the amount of \$37,500. We propose to bill the fee in three monthly increments of \$10,000 each, and we will bill the final \$7,500 only when the work described above is complete.

Representing you in this matter may involve incurring certain charges and expenses on your behalf, which we will forward to you for your direct payment. We will include such charges and expenses on our invoices for reimbursement without mark-up. We will charge twenty cents per page for black-and-white document reproduction. (We will charge more for color document reproduction and less for large volume reproduction). We will obtain your permission before incurring any unusual expense.

Payment

All statements for services rendered are payable upon receipt unless other arrangements have been made with the firm in advance.

Duration of Engagement

Either you or the firm may terminate the engagement at any time for any reason by written notice to the other, subject on our part to applicable Rules of Professional Conduct. In the event that we terminate the engagement, we will take such steps as are reasonably practicable to protect your interests in this matter, and, if you request, we will suggest possible successor counsel and provide you with whatever papers you

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have provided to us. If permission for withdrawal is required by a court, we will promptly apply for such permission and assist you as you may desire to engage successor counsel.

Unless previously terminated, our representation will terminate upon our sending you our final statement for services rendered.

File Retention

During the firm's representation, any otherwise nonpublic information you supply to us will be kept confidential in accordance with applicable Rules of Professional Conduct and the terms of this engagement letter. At the conclusion of a matter, the firm's policy is to deliver to clients all documents and materials the client has provided the firm as a part of the representation to which the matter relates. To minimize unnecessary storage expenses, the remainder of the physical and electronic files pertaining to the matter will be transferred to storage for retention. At the end of the file's retention period (10 years at a minimum) the firm will attempt to notify you at the postal address we have on file for you. If requested, the firm will return the files to you. Depending on the volume of material, we may charge you shipping costs for the return of the files. If we cannot locate you in order to notify you at the end of the retention period, or if we notify you and you so instruct us, we will securely dispose of all materials in the file at the end of the retention period.

Client Responsibilities

By agreeing to and accepting our representation as described in this engagement letter, you agree to cooperate fully with us and to provide promptly all information known or available to you that is relevant to our representation. You (including any of your representatives) agree to be available to attend meetings, conferences, hearings and other proceedings on reasonable notice, and you agree to stay fully informed on all developments relating to all matters for which we have been engaged. You also agree to pay our statements for services rendered and charges in accordance with the terms of the engagement letter. We reserve the right, subject to applicable ethical rules, to withdraw from this matter if you fail to meet your obligations under this agreement, including payment of fees when due.

In the course of our representation, we will be asking you for information and/or instructions from time to time. It is important that we receive your response in a timely manner (i.e., well in advance of the impending deadlines). We may need to withdraw from representation if untimely responses to our requests persist.

It is important that we maintain a current address for you at all times. Please notify us promptly of any address change or any changes in your representation. Even following the completion of the requested services, there may be a need to contact you to help maintain your rights. In any event, we will use the last address we have on record for you.

By agreeing to and accepting our representation as described in this engagement letter, you authorize the firm to disclose otherwise nonpublic information you supply to us as necessary and appropriate in order

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to carry out your representation, including, but not limited to, disclosure to outside vendors, outside copying services and outside information technology organizations.

Identification Number

Thompson Hine LLP's tax identification number is 34-0575300.

Please indicate Cleveland Public Library's acceptance of the terms of this engagement by signing and returning a copy of this letter.

Based on our discussions, we will commence work on this matter in contemplation of receiving your written acceptance, and we will assume you agree with these terms, even if you have not returned a signed copy of this letter. If we do not receive the counter-signed letter within a reasonable time, we reserve the right to withdraw from further representation of you in this matter.

Please call me if you have any questions regarding anything in the foregoing letter.

Very truly yours,



Jeffrey R. Appelbaum

AGREED TO AND ACCEPTED:

CLEVELAND PUBLIC LIBRARY

By: _____

Title: _____

Date: _____
