

CLEVELAND PUBLIC LIBRARY

Board Meeting

April 16, 2020

**RESOLUTION AUTHORIZING AND RATIFYING LICENSE AGREEMENTS
WITH CITY OF CLEVELAND FOR ACCESS TO CITY PROPERTY FOR
FACILITIES MASTER PLAN**

WHEREAS, The Library Administration has determined that it is necessary to acquire property for the Library's Collinwood, Hough, Rockport, West Park, and Woodland branches in order to implement the first phase of the Library's Facilities Master Plan; and

WHEREAS, The Library intends to construct new library branches using the parcels identified in the attached diagrams for the Hough, Rockport, and Woodland branches and to construct parking facilities on the parcels identified for the Collinwood and West Park branches; and

WHEREAS, With the exception of four parcels located near the Woodland branch that are privately owned, all of the parcels that the Library intends to acquire are either owned directly by the City of Cleveland or by its land bank; and

WHEREAS, The City of Cleveland requires that the Library enter into license agreements for the various parcels owned by the City and the land bank before the Library may access those parcels to complete such due diligence as surveying and conducting environmental and geotechnical assessments; and

WHEREAS, The Library and the City of Cleveland have negotiated a license agreement in the form attached hereto; and

WHEREAS, In order to allow the Library's architects to proceed with work on the new Hough and Woodland branches, the Library entered into a license agreement in the form attached hereto, effective March 31, 2020 with the City of Cleveland for the parcels that comprise the future site of the new Hough branch; now therefore be it

RESOLVED, The Board of Trustees of the Cleveland Public Library hereby authorizes the Executive Director, CEO or his designee, to enter into license agreements with the City of Cleveland, substantially in the form attached hereto, for the purpose of allowing the Library

EXHIBIT 9

and its contractors to access property identified to conduct due diligence in preparation for acquisition for the first phase of the Library's Facilities Master Plan, which agreements shall be subject to the approval of the Chief Legal Officer; be it further

RESOLVED, The Board of Trustees of the Cleveland Public Library hereby ratifies the March 31, 2020 License Agreement entered into by the Library and City of Cleveland for parcels located at the site of the new Hough branch for a one-year period ending on March 30, 2021.

L I C E N S E FOR USE OF CITY PROPERTY

THIS LICENSE AGREEMENT ("Agreement") is entered into this ____ **day of March, 2020** ("Effective Date") by and between the City of Cleveland, a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State of Ohio ("City"), and **Cleveland Public Library, 325 Superior Avenue, Cleveland, Ohio 44114**, its employees, agents, contractors, successors and assigns, (collectively hereinafter referred to as the 'Licensee').

RECITALS:

A. Section 183.16 of the Codified Ordinances of Cleveland, Ohio, 1976 authorizes the Director of the Department of Community Development to issue a license to enter upon and to perform limited activities on certain City-owned property under the Director's management and control.

B. Licensee has requested the City to issue a license for the use of the property described in Section 1 below for the purpose of conducting **due diligence activities in connection with the potential acquisition and redevelopment of the site** (hereafter, the "Project").

NOW, THEREFORE, and subject to the terms and conditions below, the City hereby grants to Licensee the non-exclusive use of the City property described and defined below and, in consideration of the license granted to Licensee herein, Licensee agrees to the following:

1. Licensed Property. The licensed property consists of that property located at 3814 Silsby Road, and highlighted on the map attached as Exhibit A, and further known as Cuyahoga County **Permanent Parcel Number 025-31-090** (the "Licensed Property").

2. Purposes. Licensee may use the Licensed Property for activities related to the Project. The Licensee shall utilize and maintain said property in a decent, safe and sanitary manner. All cost associated therewith shall be borne by the Licensee.

3. Term of License. This License shall expire on March ____, **2021** unless earlier revoked by the City at its sole discretion.

4. Qualifications of Licensee and Its Contractors. Licensee shall be qualified to perform all activities described in Section 2, and shall perform all activities in compliance with applicable laws and regulations. Licensee must require that any and all contractors performing activities permitted under this Agreement be qualified, licensed, and bonded by the appropriate regulatory agencies and in accordance with the laws and regulations of the City of Cleveland and the State of Ohio.

5. Indemnification and Insurance. Licensee shall repair or cause to be repaired any damage to property caused by Licensee's use of, construction on, or maintenance of the Licensed Property during the term of this License by Licensee, its employees, agents, contractors and subcontractors, licensees or invitees or the exercise by Licensee of any of its rights or the performance by Licensee of any of its obligations. Licensee shall not interfere with or damage existing utility facilities on, off, under, or near the Licensed Property, and shall repair or cause to be repaired any damage resulting from Licensee's damage or interference therewith. The obligation contained in this Section shall survive the expiration or earlier termination of this License. In no event, however, shall

the foregoing obligation be deemed to extend to any liability for any environmental condition of the Licensed Property disclosed by Licensee's activities under Section 2 of this License.

Licensee shall, at its own expense, take out and maintain during the term of this License, Comprehensive General Liability insurance, wherein the City is named as an additional insured party, and shall protect itself, the City, and any entity performing work covered by this License from claims for damage for personal injury, disease, illness or death, including accidental death, as well as from claims for property damages which may arise from operations under this License, whether such operations be by itself or by any entity or by anyone directly or indirectly employed by either of them. The Comprehensive General Liability insurance policy shall have limits of liability of not less than One Million Dollars (\$1,000,000.00) applicable to the liability assumed by Licensee under this Section. Licensee shall provide the Director of Law with a copy of its Certificate of Insurance at the time of execution of this License.

6.1 Events of Default. Each of the following, without limitation, shall constitute an event of default:

- a. Licensee fails to keep, perform and observe any promise or agreement contained in this License; or
- b. Any lien is filed against the Licensed Premises because of any act or omission of Licensee.
- c. City may, upon reasonable advanced notice to Licensee, revoke this Agreement in its sole discretion at any time and for any reason without penalty.

6.2 Upon the occurrence of any of items (a) through (b) of Article 6.1, the City may, at its option, exercise any one or more of the following rights and remedies:

- a. deny access to the Licensed Property; or
- b. terminate this License Agreement; or
- c. Exercise any and all additional rights and remedies that the City may have at law or in equity.

6.3 No waiver by the City or Licensee at any time of any of the terms or conditions of this License Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other terms or condition herein or of the strict and prompt performance thereof. No delay, failure or omission of the City or Licensee to take or to exercise any right, power, privilege or option arising from any default, or subsequent acceptance of any fee then or thereafter accrued shall impair or be construed to impair any such right, power, privilege or option to waive any such default or relinquish thereof, or acquiescence therein and no notice by the City or Licensee shall be required to restore or revive any option, right, power, remedy or privilege after waiver by the City of default in one or more instances. No waiver shall be valid against the City or Licensee unless reduced to writing and signed by an officer of the City or Licensee duly empowered to execute same.

6.4 Except as otherwise provided herein, neither the City nor Licensee shall be deemed to be in default or breach of this License Agreement by reason of failure to perform any one or more of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of government authority, floods, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are not within its control; provided that Licensee's obligation to pay fees, additional fees, charges or other money payments required by this License Agreement which have been incurred prior to the force majeure event or following its cessation shall continue.

7. Compliance with Laws. Licensee shall comply with local, state, and federal laws, regulations, ordinances and orders governing the Licensed Property and the activities authorized hereunder, and shall obtain all necessary permits from the City prior to commencement of the activities authorized hereunder. The use authorized herein shall be allowed in accordance with and pursuant to City specifications.

8. Maintenance and Security of Licensed Property. Licensee shall fence, barricade or take such other measures as are reasonably necessary or appropriate to protect the general public from any danger posed by Licensee's activities under this License. Licensee shall pay for all expenses associated with its use of the Licensed Property. If Licensee does not acquire the Licensed Property, Licensee herein agrees that any damage to the Licensed Property shall be repaired, remedied or abrogated prior to termination of the License. However, if the Director determines that the damage creates a situation that is a threat to health and safety at any time prior to termination of the License and upon receipt of written notice from the Director, Licensee shall repair, remedy or abrogate the untenable situation to the extent legally possible within twenty-four (24) hours. If Licensee does not acquire the Licensed Property, at cessation of this License, Licensee shall provide to the City a photograph of the Licensed Property to document compliance with this Section.

9. Taxes and Other Charges. Licensee agrees to timely pay all taxes, if applicable, and any other charges or expenses attributable to Licensee's activities.

10. Surrender of Premises and Title to Improvements. If Licensee does not acquire the Licensed Property, Licensee shall yield and deliver peaceably to the City possession of the Licensed Property at the conclusion of its activities but no later than the date of cessation of this License, whether such cessation be by revocation, termination, expiration or otherwise, promptly and in good condition. If Licensee does not acquire the Licensed Property, prior to such surrender of the Licensed Property, Licensee shall restore and repair any and all damage to the Licensed Property caused by, related to or resulting from Licensee's operations thereon, normal wear and tear excepted. Licensee shall pay for all expenses associated with regrading and resodding of property, and repair of sidewalks and curbs, as needed, to the extent Licensee's activities have caused damage to these aspects of the Licensed Property and only if Licensee does not acquire the Licensed Property, .

11. Entire Agreement. This License constitutes the entire agreement between the parties as of the date hereof. Any provisions of prior licenses, agreements or documents which conflict in any manner with the provisions of this License are hereby specifically declared void and of no effect.

12. City's Right of Entry. The City of Cleveland, its officers and employees, shall be entitled to enter the Licensed Property at any time for all reasonable purposes, including, without limitation, inspection of the Licensee's activities hereunder.

13. Licensing Fee. Licensee shall pay a one-time licensing fee of \$1.00.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Director has caused this License to be executed as of the date stated below.

CITY OF CLEVELAND

By: _____
Tania Menesse, Director
Department of Community Development

Date: _____

The undersigned hereby agrees and consents to the terms and conditions of this License, and further states that s/he has authority to sign on behalf of the Licensee.

CLEVELAND PUBLIC LIBRARY

Signature: _____

Print Name: _____

Title: _____

Date: _____

The form and correctness of
This instrument was approved by:

Barbara A. Langhenry
Director of Law
City of Cleveland

By: _____
Richard Bertovich
Chief Assistant Director of Law