

CLEVELAND PUBLIC LIBRARY

Finance Committee

May 17, 2016

**RESOLUTION AUTHORIZING AGREEMENT WITH THE CHILCOTE LAW FIRM LLP
FOR LEGAL SERVICES**

WHEREAS, On September 17, 2015, the Board of Trustees of the Cleveland Public Library authorized the Library Administration to proceed with negotiating a development agreement with University Circle City Center LLC (“UC3”) for the relocation and construction of a new Martin Luther King Jr. library branch as a part of UC3’s overall development project in University Circle; and

WHEREAS, Due to the complexity of the development deal, which involves developing plans for the new Martin Luther King Jr. branch (MLK Jr.), coordinating the plans for the new branch with the overall development project at University Circle, particularly the construction of the parking garage, obtaining financial assurances from the developers for the project, constructing the new branch, and exchanging the real estate upon which the current MLK Jr. branch sits with the parcel of real estate for the new branch on Euclid Avenue and performing the necessary due diligence review prior to transfer, the Chief Legal Officer has sought out the legal assistance of attorney Lee Chilcote of the Chilcote Law Firm; and

WHEREAS, Lee Chilcote has 43 years of experience in real estate, financing, environmental, and construction law, and is a member of both the American College of Real Estate Lawyers and American College of Mortgage Attorneys. He was a partner with the former Arter & Hadden law firm and with Hahn Loeser for many years, and has experience representing public entities, having worked with Cuyahoga County to develop legal documents for its brownfields and residential housing lending programs; and

WHEREAS, The Chilcote Law Firm has already been engaged to assist the Library in preliminary negotiations with UC3, and the Library has expended \$12,072.50 in fees to date. Mr. Chilcote has provided the Library with an estimate of the cost of legal services through the completion of the project which he estimates will cost an additional \$38,250.00, for a total contract amount of \$50,322.50. In light of the complexity of this project, the Chief Legal Officer recommends this fee as a reasonable fee; now therefore be it

RESOLVED, That the Board of Library Trustees authorizes the Executive Director, CEO or the Chief Legal Counsel to enter into an agreement with The Chilcote Law Firm to provide legal services in connection with the Martin Luther King Jr. branch relocation project, in an amount not-to-exceed \$50,322.50, 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.

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

May 17, 2016

Re: Development, Construction and Relocation of
the Martin Luther King, Jr. Branch (“MLK Branch”)
of the Cleveland Public Library (sometimes, the “Project”)

Dear Joyce:

Pursuant to our engagement letter of October 1, 2015, a copy of which is attached, we agreed to mutually endeavor to develop a budget for the development, construction and relocation of the MLK Branch as soon as practicable following initial meetings with the city and the developers. As you know, the principals of UC City Center, LLC (“Developer”) have nearly completed their negotiations with the city for the purchase of the Police Station Parcel and the East Stokes Parcel and development of Phase I of the mixed-use development known as Circle Square (“Development”). In addition, we have now received and preliminarily reviewed a second iteration of a proposed development agreement prepared by the Developer. We are now in a position to more accurately estimate our legal fees for the Project. This letter will set forth our proposed scope of services and an estimated range of fees.

Please understand that the fluid nature of the Project may require further adjustment of our proposed scope or our estimated range of fees. We will make every effort to stay within the estimated range of fees, but much depends on whether the current proposed approach to the Project stays intact. Having worked with you successfully on many prior occasions and given the working relationship we have developed with your office as to the Project, we are reasonably confident that we will be able to stay within the estimate, but as you know, we are facing multiple unknowns regarding the Developer and the Project. We will simply need to adjust to any transaction changes as they arise and do our best. As we have indicated, all information in our monthly billing system is readily available to you upon request and we will keep you fully informed at all times, particularly if we approach the upper range of the estimate.

In connection with the Project, we propose the following scope of services and estimated breakdown of costs as follows (all estimates are based on a single blended rate of \$275.00/hour):

1. Pre-Engagement Work. Initial review of materials relating to the Project, including descriptions and presentation materials describing and detailing phases and other aspects of the Development; detailed review of requests for proposals and responses, maps, satellite imagery and geographic information system data; initial internal meetings to understand

status of Project and the needs of Cleveland Public Library (“CPL”). *The value of our work was \$3,575.00, but was performed without charge.*

\$0.00

2. Initial Work. Meetings with J. Dodrill and T. Nichols to understand status and details of the development of Phase I of the Development and to develop an approach protective of and meeting the needs of CPL; assist in identifying and vetting concept architect and cost estimating consultant to serve on CPL’s behalf in the Project to develop estimated Project scope and cost for negotiation with Developer as to contributed construction and other costs; detailed review of initial version of development agreement; review of competitive bidding requirements under state law and development of brief memorandum confirming interpretation; development of detailed memorandum and points agenda identifying required modifications to initial version of development agreement and conferences and meetings relating thereto; extended meeting with S. Rubin and Z. Paris to present required modifications. *The value of our work was \$15,207.50, but was performed for a reduced amount of:*

\$12,072.50

3. Development Agreement. Review of and revisions to development agreement; negotiate and finalize development agreement with the Developer. *From an initial review of the second iteration of the development agreement, we believe that considerable additional time will be required for negotiation and revisions of the development agreement. Among other provisions, we anticipate additional work with respect to the (i) review of documents for the purchase of the Euclid parcels; (ii) review of the development and purchase agreement for the Police Station Parcel and the East Stokes Parcel; (iii) review of the Preliminary Site Plan for the Development; (iv) negotiation of the construction costs, soft costs and transaction and other costs to be paid for by the Developer following completion of concept drawings and development of sound preliminary cost estimate; (v) defining of the process for requests for proposals from and selection of the Project architect and construction manager at risk contractor; (vi) defining of the process for development, review and approval of Plans and Specifications; (vii) preparation, negotiation and finalization of the escrow arrangement with respect to the deeds to the Existing Library parcel and the New Library Parcel; and (viii) review of documents and arrangements for private financing, and public grants, financing and incentives necessary for the Development.*

\$14,500.00 - \$19,750.00

4. Due Diligence Review. Analyze environmental, geotechnical and other property assessment reports, surveys and title reports for the New Library Parcel; advise CPL based upon results of such review. *We will work closely with you and your staff, with a view that as much of the due diligence review as possible will be completed internally without our assistance.*

\$5,500.00 - \$6,500.00

5. Construction Contract. Assist CPL and the Developer with the selection of and negotiation with the construction manager at risk contractor; review and revise and/or supplement construction agreement proposed by Developer; work with Developer and CPL to finalize construction agreement. *We will work closely with the Developer and you and your staff to ensure that the most effective cost is obtained and the quality of the work to be performed is not compromised.*

\$4,500.00 - \$6,000.00

6. Closing and Exchange. Preparation and finalization of conveyancing instruments for transfer of the Existing Library to Developer and of the New Library to CPL; secure as-built survey, certificate of occupancy, warranties and commissioning information; complete exchange of properties. *We assume that with an existing escrow the conveyancing will be straight forward and that our focus will be on other closing details.*

\$4,000.00 - \$6,000.00

Based on the foregoing, we estimate a cost for the above services in the range of **\$40,572.50 to \$50,322.50**. Of this total range, please keep in mind that \$12,072.50 has already been paid by CPL. As a result, we estimate that the remaining services can be completed for a total charge between **\$28,680.00 and \$38,250.00**. *We are requesting your support for a total budget of \$50,000, including amounts paid.*

If you have any questions about any of the foregoing, please do not hesitate to call me.

Cordially



Lee A. Chilcote

cc: David T. Dohnal, Esq.

October 1, 2015

VIA ELECTRONIC AND REGULAR U.S. MAIL

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

**Re: Relocation of the Martin Luther King, Jr. Branch of the Cleveland Public Library
("Cleveland Public Library")**

It is our pleasure to welcome **Cleveland Public Library** as a client of Chilcote Law Firm LLP (the "Firm"). This letter and the attached Terms of Retention (which are incorporated herein) will confirm the terms and conditions on which the Firm will undertake to represent you in connection with an agreement for the sale of the property housing the Martin Luther King, Jr. Branch of the Cleveland Public Library, which is presently located at 1962 Stokes Boulevard, and the acquisition and development of a property housing this branch at a new location (collectively, the "Legal Matters").

We propose the following fee structure for the Legal Matters. We agree represent you at a rate of \$275.00 per hour, which represents a blending of the hourly rates of each of the lawyers at the Firm who will be involved in your representation. Lee A. Chilcote will involve David T. Dohnal or Christina C. Tizzano in specific aspects of your representation as appropriate to their strengths, in an effort to avoid duplication of time. We will mutually endeavor to develop a budget for the Legal Matters, as soon as practicable following initial meetings with the city and the developers of the University Circle Center complex, but in all events before incurring \$7,500 in fees.

You acknowledge that we are not your general counsel and that our acceptance of this engagement does not involve our representation of you or your business or other interests with respect to any matters other than the Legal Matters. We are being retained solely to advise you with respect to matters of applicable Ohio law, and not as to any other state law that may be applicable to the Legal Matters. Unless otherwise agreed in writing, the terms of this letter will also apply to any additional matters that the Firm may handle on your behalf.

We appreciate the opportunity to serve as your counsel and look forward to a long and mutually rewarding relationship. If you become dissatisfied with our charges or services in any way, we encourage you to bring that to our attention immediately.

If this letter and the Terms of Retention attached hereto correctly reflect your understanding of the scope, terms and conditions of our representation of you with respect to the Legal Matters, please indicate your acceptance hereof by executing the enclosed copy of this letter in the space provided below and returning it to the attention of the undersigned at our

office address set forth on the first page of this letter. By executing this letter you will be acknowledging that you have read this letter and understand its terms. If the Firm does not receive a signed copy of this letter from you and the Firm commences rendering services to you, you shall nevertheless be deemed to have accepted and to have agreed to all of the terms and conditions of this letter to the same extent and with the same force and effect that would be applicable if the Firm had received a signed copy of this letter as herein requested.

We are pleased to have this opportunity to represent you. If you have any questions concerning this letter or our representation, please call the undersigned at (216) 795-4117.

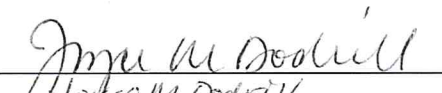
Very truly yours,

CHILCOTE LAW FIRM LLP

By: 
Lee A. Chilcote, Managing Partner

Cleveland Public Library agrees to the above terms and provisions.

CLEVELAND PUBLIC LIBRARY

By:  10/7/15
Name: Joyce M Dadrill
Title: Chief Legal Officer

**Terms of Retention
Of
Chilcote Law Firm LLP**

Except as modified in writing, the following provisions will apply to the relationship between **CHILCOTE LAW FIRM LLP** (the "Firm") and the client ("you") as identified in the accompanying letter agreement:

1. Client; Conflicts.

The Firm is being retained solely as counsel for you and our representation pursuant to the terms of this letter does not encompass the representation of any individual or any other entity, including but not limited to, any of your officers, directors, employees, agents or affiliates.

You are aware that the nature of the Firm's practice is such that the Firm may from time to time concurrently represent one client in a particular case or matter and an adversary of that client in such case or matter in an unrelated case or matter if it is the Firm's professional judgment that the Firm can undertake the concurrent representation impartially and without any adverse effect on the other responsibilities the Firm has to either client. You acknowledge that you do not consider such concurrent representation, in unrelated matters, to be inappropriate and consent to any such present or future concurrent representations.

2. Fees and Billing.

This letter will confirm your agreement to pay our fees for the professional services we render to you or on your behalf pursuant to this engagement and to reimburse us for any extraordinary costs and expenses which we incur or pay on your behalf. Statements for fees and costs normally will be submitted monthly and are payable upon presentation at the address specified on the invoice for payment. Please contact Lee A. Chilcote if you have any billing questions.

It is our practice to charge our client for services rendered primarily on the basis of the hours recorded, based upon our then current guideline hourly rates. Our guideline hourly rates take into consideration a number of factors, including the experience and capabilities of our lawyers who are involved. **Our hourly rate for our representation of you with respect to the Legal Matters is a blended hourly rate of \$275.00 per hour, in accordance with the accompanying letter agreement.** We will not increase this rate during the engagement period covered by this agreement.

3. Reimbursement of Costs.

Our invoices may include charges for extraordinary costs, if any, we incur in connection with the Legal Matters. We will not charge you for ordinary costs we incur in the course of representing you in connection with the Legal Matters. Examples of such ordinary costs for which you will not be billed include local travel expenses (including mileage, parking, meals and ground transportation), messenger and delivery services, photocopying, long distance telephone, telecopying or computerized legal research.

4. Discharge and Withdrawal.

Each of us reserves the right to terminate our representation in the Legal Matters at any time by delivering a written notice of termination to the other. For example, we may withdraw if you do not honor the terms of this letter or fail or refuse to cooperate with us or follow our advice on a material matter, or if we become aware of any fact or circumstance that would, in our view, render our continuing representation of you unlawful or unethical.

If you discharge us or we elect to withdraw, you will take all steps necessary to free us of any obligation to perform further services, including the execution of any documents necessary to complete the termination of the representation (including, without limitation, any substitution of attorney form that may be required in any legal proceeding in which the Firm is counsel of record) and we will take such steps which, in our view, are reasonably practicable to protect your interests. If a discharge or withdrawal occurs, we will be entitled to be paid or reimbursed for all costs and expenses paid or incurred by us on your behalf, and we also will be entitled to be paid our fees for the professional services we have rendered to you to the date of termination and for which we previously have not been paid.

5. No Guarantee of Outcome; Limitation on Liability.

We do not and cannot guarantee the outcome in any matter. You also agree that the Firm shall not have any liability to you in connection with our representation except for liability for losses, claims, damages, liabilities or expenses incurred by you that result from our professional malpractice, gross negligence or willful misconduct. Further, the Firm is an Ohio registered limited liability partnership. As a result, with certain possible limited exceptions, none of which may be applicable, the partners of the Firm are not liable or accountable, directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise, for debts, obligations, or liabilities of or chargeable to the Firm or another partner in the Firm, whether arising in tort, contract, or otherwise, that are incurred, created, or assumed by the Firm, by reason of being a partner or acting in the conduct of the business or activities of the Firm.

6. Document Retention and Destruction.

In the course of our engagement, we are likely to come into possession of copies or originals of documents or other materials belonging to your or others. Once the particular matter to which those materials relate has been concluded, it is your obligation to advise us as to which, if any, of the documents in our files you wish us to return to you. We may keep copies

thereof to the extent we believe advisable for our records. We will retain any remaining documents in our files for a certain period of time and ultimately destroy them in accordance with our document retention program then in effect.

7. Applicable Law.

This letter and the engagement contemplated hereby shall be governed by the laws of the State of Ohio.

8. Entire Agreement.

This letter constitutes the entire agreement between you and the Firm regarding your engagement of the Firm to represent you with respect to the Legal Matters, is subject to no oral agreements or understandings and can be modified or changed only by a further written agreement signed by you and the Firm. No obligation or undertaking not set forth expressly in this letter shall be implied on the part of either you or the Firm.