

CLEVELAND PUBLIC LIBRARY

Board Meeting
November 17, 2011

RESOLUTION APPROVING OHIO ENVIRONMENTAL PROTECTION AGENCY DIRECTOR'S FINAL FINDINGS AND ORDERS REGARDING THE WOODLAND BRANCH OF THE CLEVELAND PUBLIC LIBRARY AND CONTRIBUTION FROM MOODY-NOLAN INC.

WHEREAS, The Cleveland Public Library performed certain renovations at its Woodland Branch in October 2009, and hired Sterling Professional Group LLC as the construction contractor and Moody-Nolan Inc as the architect for the project; and

WHEREAS, During construction a small area of asbestos ceiling tile was disturbed by Sterling Professional Group LLC. As a result, construction was stopped, the Woodland Branch was closed, and the facility was inspected and tested; and

WHEREAS, Air sampling was performed and the samples determined that although some asbestos was released asbestos fiber concentrations were within the Ohio Department of Health's guidelines; and

WHEREAS, Thereafter, a certified asbestos abatement contractor was hired to remove the asbestos containing materials and clean the Woodland Branch; and

WHEREAS, As a result of the incident, the Ohio Environmental Protection Agency issued proposed Director's Final Findings and Orders to the Cleveland Public Library, Sterling Professional Group, and Moody-Nolan, finding the parties in violation of notification, inspection, and other provisions of Ohio law concerning asbestos regulation; and

WHEREAS, The Ohio EPA Director's Final Findings and Orders originally demanded payment of a civil penalty in the amount of \$31,500 from the parties. After negotiations, the Ohio Environmental Protection Agency agreed to reduce the civil penalty to \$24,500; and

WHEREAS, The Board of Trustees has determined, after receiving advice of legal counsel, that the Ohio EPA and the Ohio Attorney General would have grounds to pursue legal

action against the Library as owner of the Woodland Branch, for payment of some or all of the civil penalty, and that it is in the best interests of the Library to save the costs of further negotiations and possible litigation, and agree to the Director's Final Findings and Orders and pay a portion of the civil penalty; and

WHEREAS, The Ohio EPA has agreed to accept the sum of \$12,250 from the Cleveland Public Library, and donate a portion of the Library's fine to the Ohio EPA's Clean Diesel School Bus Program Fund. The Ohio EPA will pursue collection of the balance of the civil penalty without further involvement of the Cleveland Public Library. Moody-Nolan has offered to contribute \$5,000 towards the payment of the civil penalties; now therefore be it

RESOLVED, That the Director is authorized to settle and resolve the Ohio EPA Director's Findings and Orders for an amount up to \$12,250, said sum being charged to Account 11020057-57500, and be it further

RESOLVED, That the Director is authorized to settle and resolve any claims the Library may have against Moody-Nolan in connection with the 2009 Woodland Branch construction cost overruns and asbestos release, provided Moody-Nolan agrees to remain a party to the Ohio EPA Director's Findings and Orders and that it contribute an amount **not less than** \$5,000 toward the civil penalty; and be it further

RESOLVED, That the President of the Board or the Director are hereby authorized to negotiate and execute the Ohio EPA Director's Final Findings and Orders, and a settlement agreement with Moody-Nolan in such form and substance as are approved by the Library's Chief Legal Officer.