

# County Council of Cuyahoga County, Ohio

## Resolution No. R2013-0240

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| <p>Sponsored by: <b>County Executive FitzGerald/Department of Law</b></p> | <p><b>A Resolution</b> authorizing retention of the law firm of Thompson Hine LLP as legal counsel in connection with the Convention Center Hotel Project in the amount not-to-exceed \$880,000.00 for the period 11/1/2013 - 9/1/2016; authorizing the Director of Law to execute the Engagement Letter and all other documents consistent with this Resolution; and declaring the necessity that this Resolution become immediately effective.</p> |
|---|--|

WHEREAS, Cuyahoga County retained Thompson Hine LLP on or about March 12, 2012, as amended, to represent the County in connection with the Convention Center and Medical Mart (now Global Center for Health Innovation Project); and,

WHEREAS, it is now necessary to continue the firm's legal services in connection with the Convention Center Hotel; and,

WHEREAS, it is necessary that this Resolution become immediately effective in order that the time-sensitive project can continue proceeding on schedule and that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of a County entity.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:**

**SECTION 1.** County Council hereby approves the retention of Thompson Hine LLP as legal counsel for the Convention Center Hotel project for the period November 1, 2013, through September 1, 2016, at an amount not to exceed \$880,000.00, and authorizes the Law Director to execute an Engagement Letter with Thompson Hine LLP for same. To the extent that any exemptions are necessary under the County Code and contracting procedures, they shall be deemed approved by the adoption of this Resolution.

**SECTION 2.** The Clerk of Council is hereby directed to transmit a certified copy of this Resolution to the Law Director and Assistant County Prosecutor Gregory Huth for the Prosecutor to secure a journal entry from the Court of Common Pleas approving this retention.

**SECTION 3.** It is necessary that this Resolution become immediately effective for the usual daily operation of the County; the preservation of public peace, health, or safety in the County; and any additional reasons set forth in the preamble. Provided that this Resolution receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

**SECTION 4.** It is found and determined that all formal actions of this Council relating to the adoption of this Resolution were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

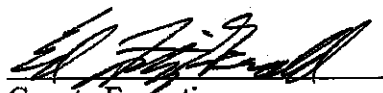
On a motion by Mr. Schron, seconded by Ms. Conwell, the foregoing Resolution was duly adopted.

Yeas: Miller, Brady, Germana, Gallagher, Schron, Conwell, Jones, Rogers, Simon and Connally

Nays: Greenspan

  
County Council President

11-12-13  
Date

  
County Executive

11/14/13  
Date

  
Clerk of Council

11/12/2013  
Date

First Reading/Referred to Committee: October 22, 2013  
Committee(s) Assigned: Committee of the Whole

Journal CC012  
November 12, 2013

November 11, 2013

Cuyahoga County Department of Law  
Courthouse Square – 7th Floor  
310 Lakeside Avenue  
Cleveland, Ohio 44113  
Attn: Majeed G. Makhlouf, Director

RE: Legal Representation for the New Convention Center Hotel Project in Downtown Cleveland, Ohio

Dear Mr. Makhlouf:

On behalf of Thompson Hine LLP, I am writing to express our thanks for the opportunity to represent the County of Cuyahoga, Ohio ("Cuyahoga County") in the matter referenced below. At the outset of any new matter, it is important to have a mutual understanding of how we will work together.

The purpose of this engagement letter is to memorialize the identity of our client, to confirm the scope and nature of the services Thompson Hine has been asked to provide (including any limitations in that regard), and to agree with you regarding terms for the provision of our services. This engagement letter, together with the Standard Terms of Representation provided with this engagement letter, will describe the basis on which our firm will provide the legal services described in this engagement letter.

Thompson Hine uses this relatively standard form letter to ensure that all of our clients receive comparable information regarding new engagements. We are committed to providing top-quality legal representation and services customized to meet your needs. If you have any questions about the provisions of this engagement letter, or if you would like to discuss possible modifications, please call me at your earliest possible opportunity.

Thompson Hine has been engaged to represent Cuyahoga County in connection with the development, design and construction of the new convention center hotel in downtown Cleveland, Ohio. We will perform the services set forth on Exhibit A attached hereto. We may agree with Cuyahoga County to limit or expand the scope of our representation from time to time, provided that any such change in the scope of our services is confirmed in writing. To the extent we do extend the scope, such services will be subject to the terms and conditions established in this letter and the attached Standard Terms of Representation.

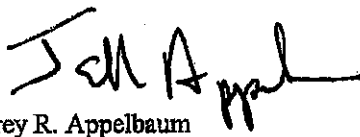
In connection with this engagement, we have agreed to charge for our services on the basis set forth on Exhibit B attached hereto. Additional information regarding fees and other important matters appears in the Standard Terms of Representation. Please indicate Cuyahoga County's acceptance of the terms of this letter and the Standard Terms of Representation by signing and returning a copy of this letter.

Cuyahoga County  
November 11, 2013  
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Based on our discussions, we will commence work on this matter in contemplation of receiving your written acceptance. 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. We also 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.

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

Very truly yours,

  
Jeffrey R. Appelbaum

Enclosures: Standard Terms of Representation

AGREED TO AND ACCEPTED:

**THE COUNTY OF CUYAHOGA, OHIO**

By: Majeed G. Makhoul  
Title: Director of Law  
Date: November 21, 2013

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**Exhibit A**  
**Scope of Services**

1. Legal analysis and recommendations with respect to overall project development, project delivery and risk management system.
2. Preparation of Request for Qualifications for Criteria Architect; preparation of Letter of Intent for Criteria Architect; preparation of Services Agreement for Criteria Architect; negotiation and preparation of final contract terms and conditions for Criteria Architect and ancillary contract documentation as required or requested.
3. Preparation of Request for Qualifications and Request for Proposals for Design-Builder; preparation of Design-Build Agreement; negotiation and preparation of final contract terms and conditions for Design-Builder; preparation of GMP Amendment, exhibits thereto, and all associated documentation.
4. Preparation of Request for Proposals for Hotel Operator; preparation and negotiation of Term Sheet with Hotel Operator; preparation and negotiation of Qualified Management Agreement with Hotel Operator (in collaboration with Kutak Rock LLP) and ancillary documentation as required or requested.
5. Preparation of Requests for Qualifications, Request for Proposals, and negotiation and preparation of contracts for other project consultants (e.g., geotechnical services, testing and inspection, cost estimating, hotel consulting, purchasing agent).
6. Assistance with development of Cooperative Agreement by and among the County, the City of Cleveland and the Cleveland-Cuyahoga County Port Authority; analysis of, and assistance with, real estate and financing issues pertaining to same.
7. Development of risk management and insurance plan.
8. Attendance at regularly scheduled legal project team meetings throughout the duration of the project.
9. Meeting with and briefing County Council and other County officials, as requested.
10. Miscellaneous services as requested throughout the Project in connection with contracting, bonding, risk management and resolution of ongoing issues.
11. Services in connection with project closeout.

The foregoing list is illustrative of the services we will provide, but not exhaustive. It is our intention to be available to assist the County on a day-to-day basis with resolution of construction issues as they typically arise on a project of this type. We will also assist the County with resolution of claims issues leading up to, but not including, any formal adjudication process.

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**Exhibit B  
Compensation**

1. **Legal Fees.** For performance of the Services listed in Exhibit A, Thompson Hine LLP shall be paid by Cuyahoga County, Ohio a lump sum amount of \$850,000 ("Legal Fees"). The Legal Fees shall be paid as set forth below:

|                               |                                 |
|-------------------------------|---------------------------------|
| November 2013-January 2014    | \$210,000 (\$70,000 each month) |
| February 2014- September 2016 | \$640,000 (\$20,000 each month) |

2. **Reimbursable Expenses.** In addition to the Legal Fees, reimbursable costs, including travel outside Cuyahoga County, reproduction of documents, long distance telephone calls, and overnight or courier services, will be billed by Thompson Hine to the County, without mark-up, pursuant to the attached Reimbursable expense policy. Reimbursable Expenses shall not exceed \$30,000 without the County's prior written approval.

## Thompson Hine LLP Standard Terms of Representation

This document supplements a related specific engagement letter and sets forth the standard terms of Thompson Hine LLP's engagement as lawyers for the client named in that engagement letter ("you"). Unless modified in writing, these terms will be deemed part of our agreement with you.

### Legal Fees & Staffing

Our profession's Rules of Professional Conduct generally permit a law firm to consider the following factors in pricing legal services in addition to regular hourly rates: the novelty and difficulty of the question involved, the skills required to perform the legal services, the likelihood that work under this engagement will preclude work under other engagements, the fees customarily charged in the locality for similar services, the amount of time involved and results obtained. Time limitations imposed by the client or by other circumstances may also be considered in determining an appropriate fee. We may consider any or all of these factors when submitting billings for our services.

Our billing rates are reviewed and revised from time to time to reflect changes in levels of experience and various economic factors. In providing legal services, we may decide that it is necessary or appropriate to involve attorneys and legal assistants having different levels of experience, skills, and rates that may differ from the rates previously communicated, and we will make those decisions with a view to your objective that we provide services in a cost-effective manner.

### Charges and Disbursements

Certain charges and expenses incurred on a client's behalf in rendering legal services, such as facsimile, photocopying, messenger and delivery charges, electronic research, travel expenses, filing fees and the like, are payable by you, either directly or by reimbursing our firm. Fees and expenses of others (such as consultants, expert witnesses, appraisers and local counsel) will not be paid by us, but will be forwarded directly to you for payment unless we have a different arrangement in writing. There is typically no increase for any overhead or administrative expense, and no decrease for early payment or other discounts. Below is a list of expenses and the corresponding Thompson Hine charges.

| <u>Cost Type</u>  | <u>Charge</u>  |
|---|--|
| Conference Room Usage   | No charge  |
| Court Costs, Filing Fees, Court Reporters, Witness Fees, Local Counsel Fees | Actual cost  |
| Electronic Legal Research   | If LexisNexis: 70% discount from "Gross Amount" plus tax, per Lexis "Standard Per Search Pricing Schedule" *<br>If Westlaw: 70% discount from "Total Charges" plus tax, per Westlaw "Schedule A Pricing" *<br>All other electronic legal research: Actual cost |
| Duplication / Copying   | \$0.20 per page, up to 1,000 copies.<br>Additional copies:<br>1,000 - 2,999 = \$0.10 per page<br>3,000 - 3,999 = \$0.09 per page<br>4,000 - 4,999 = \$0.08 per page  |

5,000 - 5,999 = \$0.07 per page  
6,000 and above = \$0.06 per page

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| Facsimile   | \$1.00 per page  |
| Postage   | No charge for ordinary mailings. Actual cost for single mailings with postage above \$1.00 and for Certified, Registered or Special Mail, or Bulk Mailings   |
| In-House Meals  | Actual cost (if applicable)  |
| Local Delivery  | Actual cost for third party courier and messenger service. Out of pocket costs only if using firm personnel  |
| Overnight Delivery                                      | Actual cost  |
| Local Travel Expenses                                   | Actual cost for tolls, parking, etc. IRS stated rate for mileage in excess of commute  |
| Out of Town Travel                                      | Actual cost of lodging, meals, transportation, etc. or mileage at IRS stated rate  |
| Secretarial & Word Processing                           | No charge  |
| Secretarial Overtime                                    | No charge  |
| Overtime Related Expenses - Transportation, Meals, etc. | No charge  |
| Paralegal Overtime                                      | No additional adjustment to assigned billing rates   |
| Staff Time  | Staff time for non-legal services (other than those services specifically described above in this document) will be charged at our assigned hourly billing rates that range between \$40 and \$215 |
| Storage of Files  | No charge  |
| Telephone   | No charge for local and long distance. Conference call and off-site (e.g. hotel) charges at actual cost  |

\* This approximates the firm's negotiated contract discount.

#### **Electronic Communication**

We communicate often with our clients using facsimile machines, mobile telephones, texting, and email. These forms of communication are not completely secure against unauthorized access. There is some risk of disclosure and loss of attorney-client privilege in using these forms of communication, because they do not ensure the confidentiality of their contents. If you object to our using any one or more of these forms of communication, you must advise the Thompson Hine lawyer principally responsible for your matters, and we will honor that request.



### Travel

All air travel within the continental United States will be at coach fare unless we obtain your prior approval. Local travel (car service, taxi, Amtrak train and other public transportation) will be charged at our direct out-of-pocket cost. Automotive travel will be subject to reimbursement at the IRS guideline amount or our direct out-of-pocket cost.

### Billing

Statements for services rendered and costs advanced by the firm are rendered to clients monthly. In addition, the firm often sends its clients a monthly statement of account that itemizes amounts outstanding as of the date the statement is prepared. For any questions related to billing, you should contact the lawyer at our firm who is principally responsible for your matters.

### Payment

All statements for services rendered are payable upon receipt unless other arrangements have been made with the firm in advance. If your payment is delayed beyond 30 days, interest at 1.0 percent per month will accrue on the unpaid amount, and you may be billed for such accrued interest. Thompson Hine reserves the right to withdraw as counsel for any client that fails to pay bills when due.

### Insurance Coverage

If the services we are engaged to perform relate to the defense of litigation or to protect a client's intellectual property rights, the client's liability insurance may provide some reimbursement for the associated legal fees. We urge every client to contact the client's insurer to determine the nature and extent of the applicable coverage, if any. It is the client's responsibility to pay the firm for services rendered and to obtain reimbursement from the insurer.

### Conflicts

Before preparation of the engagement letter, we conducted an internal check of our records to determine whether or not a conflict may exist with one or more of our existing clients. Unless otherwise noted in the engagement letter, it appears that no such conflict exists.

Under our profession's Rules of Professional Conduct, we must have undivided loyalty to our clients. This requirement means that a lawyer must refuse to accept or continue employment if the interests of another client may impair the independent professional judgment of the lawyer. Thompson Hine represents many other entities and individuals; it is possible that while we are representing the client identified in the engagement letter some of our present or future clients will have disputes or transactions with the identified client. As a result of such a dispute or transaction, conflicts of interest may arise; if and when they do, we will address them with each client in a manner consistent with our obligations under the Rules. 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 a waiver may be solicited, we may solicit a waiver from each client. In circumstances in which a waiver is not required, we may represent each client. We will protect, however, as required by these Rules, the confidential information or documents entrusted to our care by each client.

### **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 the matter described in the engagement letter, and, if you request, we will suggest possible successor counsel and provide you with whatever papers you 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 that we retain will be kept confidential in accordance with applicable Rules of Professional Conduct and these Standard Terms of Representation. 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 files pertaining to the matter will be transferred to closed storage for retention. When the files' retention period has expired, typically after 10 years, the firm will make reasonable efforts to locate and notify you that the files will be disposed of at the end of a 30-day period unless you request the return of the files within that period. If requested, the firm will return the files to you. You may be charged shipping costs for the return of the files. Files will be disposed of if you so instruct, if we do not locate you after reasonable attempts to do so or if you do not respond to the firm's communication after 30 days.

We accomplish any destruction or disposition of client files in a manner intended to preserve the confidential and privileged nature of the contents of the file.

### **Disclosure of Information Necessary to Carry out Representation**

By agreeing to and accepting our representation as described in the engagement letter, you authorize the firm to disclose otherwise nonpublic information you supply to us as necessary and appropriate in order to carry out your representation, including but not limited to disclosure to outside vendors, outside copying services and outside information technology organizations.

### **Maintenance Fees and Annuity Payments**

If our engagement involves patent rights, the firm will manage payment of foreign annuities before a patent is issued. Once a patent number has issued, payment of U.S. maintenance fees and/or foreign annuities will not be managed by the firm and will be the client's responsibility. The firm's policy is to provide clients with a list of service providers who specialize in this area. It is solely the client's decision to select a service provider. The firm will notify the client about the need to transfer granted patents to a service provider at the time of grant. Once the client has selected a service provider, the firm will coordinate the transfer of granted patents with the client's selected provider.

### **Client Responsibilities**

By agreeing to and accepting our representation as described in the 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) must 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

It is important that we maintain a current address for you at all times. You must 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 that event, a mailing sent to your last address of record will be considered adequate notice.

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 reserve the right to decline additional work if information or instructions are not provided in a timely manner and to withdraw from representation altogether if untimely practices persist.

**Identification Number**

26 U.S.C. § 6103

Thompson Hine LLP's tax identification number is [REDACTED]

10232422.4