

**ORDINANCE NO 46 - 23**

By: Monique Lampke

**An ordinance to approve an inter-governmental agreement between the City of Bexley and the Bexley Public Library, and to declare an emergency.**

**Whereas:** The Library and the City are planning construction of a new outdoor reading room located in between Bexley Public Library, 2411 E. Main Street, Columbus, Ohio 43209 and Congregation Torat Emet, 2375 E. Main Street, Columbus, Ohio 43209 and other related exterior improvements (the "Project."); and

**Whereas:** The outdoor reading room will include space for seating, small library programs, lighting fixtures, and a water feature as well as improvements to landscape retaining walls, sidewalks, and entry steps/ramp at the Library's main entrance.

**Whereas:** The Parties are entering into this Agreement as authorized by Ohio Revised Code §715.02. The Parties will jointly benefit from the Project and have determined to jointly fund the Project. The Parties are entering into this Agreement for the purpose of identifying how the Project will be designed, constructed, and managed and expenses apportioned; and

**Whereas:** Pursuant to Ohio Revised Code § 715.02, to be effective, this Agreement must be approved by ordinance or resolution, as applicable, passed by the legislative bodies of the Parties and such ordinance or resolution shall set forth the Agreement in full and, when approved, shall be a binding contract;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY**

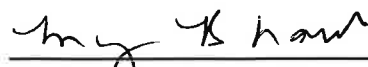
**Section 1.**

That the Mayor and Auditor are hereby authorized to enter into the Inter-Governmental Agreement between the City of Bexley and the Bexley Public Library in substantially similar form as the draft agreement attached hereto as "Exhibit A".

**Section 2.**

That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, peace, safety and shall go into full force and effect upon the approval of the Mayor.


Passed: Jan 23, 2024

  
\_\_\_\_\_  
Monique Lampke, President of Council

Attest:

  
\_\_\_\_\_  
Matt McPeck, Clerk of Council

Approved: Jan 23, 2024

  
\_\_\_\_\_  
Mayor Ben Kessler

First Reading: December 12, 2023

Second Reading: January 9, 2024

Third Reading: January 23, 2024

## **INTERGOVERNMENTAL AGREEMENT**

This Intergovernmental Agreement ("Agreement") is made and entered into as of the date executed below by the Bexley Public Library ("Effective Date"), by and among, the Bexley Public Library, a political subdivision of the State of Ohio, located at 2411 East Main Street, Bexley, Ohio 43209 (the "Library"), and the City of Bexley, Ohio a municipal corporation in the State of Ohio located at 2242 E. Main Street, Bexley, Ohio 43209 (the "City"), (the Library and City are collectively referred to as the "Parties," and individually as a "Party.").

### **RECITALS**

- A. The Library and the City are planning construction of a new outdoor reading room located in between Bexley Public Library, 2411 E. Main Street, Columbus, Ohio 43209 and Congregation Torat Emet, 2375 E. Main Street, Columbus, Ohio 43209 and other related exterior improvements (the "Project.")
- B. The outdoor reading room will be approximately 40 feet by 60 feet and include space for seating, small library programs, lighting fixtures, and a water feature as well as improvements to landscape retaining walls, sidewalks, and entry steps/ramp at the Library's main entrance. The estimated cost for construction of the Project is \$854,755.32.
- C. The Parties are entering into this Agreement as authorized by Ohio Revised Code § 715.02. The Parties will jointly benefit from the Project and have determined to jointly fund the Project. The Parties are entering into this Agreement for the purpose of identifying how the Project will be designed, constructed, and managed and expenses apportioned.
- D. Pursuant to Ohio Revised Code § 715.02, to be effective, this Agreement must be approved by ordinance or resolution, as applicable, passed by the legislative bodies of the Parties and such ordinance or resolution shall set forth the Agreement in full and, when approved, shall be a binding contract.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### **1. City Contribution.**

- a. The City has provided or will provide the design professional and/or consultant services necessary for design and construction administration of the Project and is solely responsible for the costs of and payment for all such services. The design professional services include providing all necessary drawings and specifications for construction of the Project, preparing building permit application on behalf of the Library, assisting with any needed zoning applications, as well as providing construction administration services for the Project which includes, but is not limited to, the evaluation of the contractor's work, identifying defective and nonconforming work, responding to requests for information from the contractor, shop drawing and submittals review, reviewing certificates of payment from the contractor, authorizing minor changes in work, project closeout, and assembling record drawings. The City represents that the design professional services have been or will be provided by appropriately licensed design professionals pursuant to a valid contract with the City, that

such design professionals have appropriate insurance coverages, that the Library has the rights to use the drawings, specifications, and any other work product produced for the Project (the "Instruments of Service") for constructing, using, maintaining, altering and adding to the Project, that the Instruments of Service are complete and accurate, and that the design professional(s) and consultant(s) have performed/will perform in accordance with their Standard of Care.

- b. Standard of Care. The City's design professionals shall provide their services consistent with the professional skill and care ordinarily provided by design professionals practicing in the same or similar locality under the same or similar circumstances. The City's design professionals shall perform their services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.
- c. Rights to use the Instruments of Service. The City shall ensure that the Library has the rights to use the Instruments of Service prepared by the City's design professionals for purposes of constructing, using, maintaining, altering and adding to the Project. Such rights must permit the Library to authorize contractors, subcontractors, sub-subcontractors, and suppliers, as well as the Library's consultants to reproduce (including electronically) the Instruments of Service and permit the Library to authorize other similarly credentialed design professionals to reproduce and, as permitted by law, to make changes, corrections or additions to the Instruments of Service for purposes of completing, using and maintaining the Project.
- d. The City will assist with street closures during the Project as requested by the Library, including but not limited to, closure/restriction of parking spaces in front of the Library for use for Project contractor parking from 7am to 4pm and partial closure of the alleyway between the Library and the Library's parking lot for the duration of the Project.
- e. ~~The City will contribute the sum of \$450,000.00 to the Library for constructing~~ **towards the construction of the Project, at an amount to be determined prior to Project commencement,** ~~so long as the Library enters into an agreement for construction of the Project, in its sole discretion, by January 15, 2025.~~
  - i. ~~The City will make an initial payment of \$225,000 to the Library within 10 calendar days of the Library's execution of an agreement for construction of the Project.~~
  - ii. ~~Within 10 calendar days of written notice from the Library to the City that the Project is 50% complete (i.e., the Library has made payments in the amount of at least 50% of the contract sum under the Library's agreement for construction of the Project) the City will make a second payment of \$225,000 to the Library.~~

2. Library Contribution.

- a. The Library will procure a general contractor, in accordance with Ohio Revised Code Section 3375.41, to construct the Project and the Library

will prepare and hold a lump sum contract with such general contractor, as the Owner of the Project. In its sole discretion the Library may procure a general contractor for the Project in any manner in accordance with Ohio law, reject any or all bids or proposals received for the Project, accept any bid or proposal received for the Project, and may engage in one or more procurement processes for the Project, without invalidating this Agreement.

- b. ~~To the extent the contract sum under the Library's agreement for construction of the Project exceeds the City's contributed sum of \$450,000,~~ The Library will contribute **its share of the remaining funds** required to construct the Project pursuant to such agreement.
- c. Except as may otherwise be provided for in this Agreement, the Library will have independent and full powers to manage the Project, make any and all decisions relating to the Project in its sole discretion but will name the City as a third-party beneficiary to the general contractor agreement.
- d. The Library will also require the general contractor to name the City as an additional insured on applicable insurance policies relating to the Project.
- e. Notwithstanding any other provision in this Agreement to the contrary, the Library is not obligated to enter into an agreement for construction of the Project, in its sole discretion.

3. Use of the Jointly-Contributed Funds. The Library will make payments to the general contractor using the Parties' contributed funds, in accordance with the Library's agreement with the general contractor. Such payments will be made in the Library's sole discretion, on a monthly basis based upon the Work performed by the general contractor.

4. Changes During Construction. Should the cumulative amount due to the general contractor exceed **the awarded bid amount, \$854,755.32**, the costs in excess of **\$854,755.32** may be paid by the Library, in its sole discretion.

5. Ownership and Use of Property. No property rights will transfer from the Library to the City or from the City to the Library as a result of this Agreement. The Parties anticipate that they will enter into an agreement to establish programming and operational parameters of the finished Project consistent with Ohio law, City ordinances, and the Library's bylaws and policies. This includes but is not limited to access and hours of operation.

6. Operation and Maintenance. The Parties anticipate that they will share responsibility for the ongoing operation and maintenance of the Project and will enter into a maintenance agreement to memorialize these shared responsibilities.

7. Modification. No modification or waiver of any of the terms of this Agreement will be effective against a party unless set forth in writing and signed by or on behalf of the Parties. Under no circumstances will forbearance, including the failure or repeated failure to insist upon

compliance with the terms of this Agreement, constitute a waiver or modification of any such terms. The Parties acknowledge that no person has authority to modify this Agreement or to waive any of its or their terms, except as expressly provided in this section.

8. Governing Law and Jurisdiction. All questions regarding the validity, intention, or meaning of this Agreement or any modifications of it relating to the rights and obligation of the Parties will be construed and resolved under the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto shall be brought in the Franklin County Common Pleas Court.

9. Severability. If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement will remain in full force and effect and such term will be deemed stricken; provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

10. Construction. The Parties acknowledge that each party has reviewed this Agreement and entered into this Agreement as a free and voluntary act. Accordingly, the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.

11. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

12. Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to its specific subject matter and will supersede all prior contemporaneous, oral or written agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

13. Authorization. The Parties warrant that they are duly authorized to execute this Agreement.

14. Electronic Signatures. Any party may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile or electronic signature of any other party delivered in such a manner as if such signature were an original.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective as of the Effective Date set forth above.

**Bexley Public Library**

**City of Bexley, Ohio**

X  
Ben Heckman, Library Director

Date: \_\_\_\_\_

X  
Ben Kessler, Mayor of the City of Bexley

Date: February 27, 2024

X  
Matt McPeck, Auditor of the City of Bexley

Date: Feb 27, 2024

**Approved as to form:**

Marc Fishel  
Marc Fishel, City Attorney of the City of Bexley

**CERTIFICATE OF FUNDS**

(ORC Section 5705.41)

The undersigned, Fiscal Officer of the City of Bexley, hereby certifies in connection with the Agreement to which this Certificate is attached that the amount required to meet the obligations, under the contract, obligation, or expenditure for the services described in the attached agreement, has been lawfully appropriated for the purpose, and is in the treasury or in the process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance.

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Fiscal Officer, City of Bexley

