

RESOLUTION NO. 11-09

By: Jeff McClelland

A Resolution authorizing the Mayor to sign and execute the Cultural Facility Memorandum of Understanding, the Cooperative Use Agreement, The Cultural Facility Construction Administration and Funding Agreement, and any other necessary legal documents, and to take certain other actions in connection with a \$475,000 Capital Improvement appropriation from the State Legislature for the interior renovation of Jeffrey Mansion.

WHEREAS, the Ohio Legislature has approved a \$475,000 Capital Improvement appropriation for the Jeffrey Mansion project; and

WHEREAS, the Ohio Cultural Facilities Commission must ultimately approve at a Commission meeting the awarding of the above grant; and

WHEREAS, the Commission will require that the Mayor of the City of Bexley sign certain documents related to the receipt of such grant;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1. That it is the intention of Bexley City Council to enter into the Cultural Facility Memorandum of Understanding, the Cooperative Use Agreement, the Cultural Facility Construction Administration and Funding Agreement, and any other necessary legal documents with the Ohio Cultural Facilities Commission, in connection with the funding of a certain cultural project for the City of Bexley, specifically the interior renovation of the Jeffrey Mansion, including a remodeled kitchen, bathroom facilities and hallway, a remodeled third floor, a new HVAC system, replacement of four exterior doors, renovation of the fireplaces, and removal of any exposed asbestos from the building.

Section 2. That the Mayor of the City of Bexley is hereby authorized and directed to, or cause to done, all such acts and things and to execute and deliver or cause to be executed or delivered the Cultural Facility Memorandum of Understanding, the Cooperative Use Agreement, and the Cultural Facility Construction Administration and Funding Agreement and all such other agreements, documents, instruments or certificates, in the name and on behalf of the City of Bexley, as the Mayor of the City of Bexley may deem necessary or appropriate to carry out the intent of the foregoing resolution. The execution thereof by the Mayor of the City of Bexley or the taking of such action shall be conclusive evidence of the exercise of discretionary authority conferred herein.

Section 3. That this Resolution shall go into full force and effect at the earliest date allowed by law.

Passed: 7/28, 2009

Matt Langhe
President of Council

Attest: [Signature]
Clerk of Council

Approved: 7/29, 2009

John M Brennan
John M. Brennan, Mayor

First Reading 7-14-09

Second Reading 7-28-09

Legal Agreements

The following information describes the legal agreements typically used by the Commission. All Commission-funded projects are required to enter into a Cooperative Use Agreement. Additional agreements may be required depending on the specifics of your project.

- **Cooperative Use Agreement** — The project sponsor maintains control over the facility's operations. For this reason, a Cooperative Use Agreement is entered into. The purpose of the Cooperative Use Agreement is to ensure that cultural programming will be presented to the public for at least the length of time the state's bonds are outstanding (typically 15 years) in exchange for the state providing capital improvements funding. The Commission does not involve itself in the day-to-day operations of the facility, but instead relies upon the project sponsor to manage the facility and present programming. The Commission's interest is in ensuring that culture is presented to the public and that the state-funded facility or improvements are properly built and maintained.

When an organization can successfully demonstrate its capabilities to oversee a construction project, it is eligible for local administration from the Commission. The Cooperative Use Agreement will incorporate provisions for local construction administration and funding.

- **Capital Expenditure Reimbursement Agreement** — In certain cases, the Legislature appropriates funds for projects that have already been constructed. The appropriation may supplement prior state funding for which the Commission has already approved the project and the expenditure of funds, or, a project sponsor may complete construction on a project and subsequently be appropriated state capital funds. In such cases, the Commission utilizes a Capital Expenditure Reimbursement Agreement (CERA). The agreement requires the local project sponsor to represent and warrant to the Commission that it has conducted its capital project in accordance with specific conditions established in statute, bond documents, and Commission guidelines. The execution of a CERA is accompanied by the execution of a Cooperative Use Agreement between the Commission and the local sponsor.
- **Memorandum of Understanding** — For projects that have not yet met all of the requirements to receive state funds, a Memorandum of Understanding may be entered into between the project sponsor and the Commission immediately after a Commission meeting during which certain preliminary approvals were made by the Commission. The Memorandum of Understanding documents the intent of the parties and details the remaining requirements that need to be met prior to the Commission's approval for the expenditure of state funds.

Depending on your situation, additional legal documents may be required such as:

- **Non-Disturbance and Estoppel Agreements** (if the sponsor leases the facility from a separate entity, that entity will be required to contract with the Commission);
- **Consents or Subordination Agreements** (if there is special financing for the project such as local bonds, letters of credit or outstanding mortgages);

- **Guaranty Agreements** (if circumstances of your project require one or more commitments guaranteeing repayment of state bond funds in the event of a default).