

ORDINANCE NO. 13 - 16

By: Steve Keyes

AN ORDINANCE TO APPROVE AND AUTHORIZE THE MAYOR AND THE CITY AUDITOR TO SIGN THE AGREEMENT BETWEEN THE CITY OF BEXLEY AND THE COLUMBUS ASSOCIATION FOR THE PERFORMING ARTS, TO PROVIDE INCENTIVES AVAILABLE FOR PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE MAIN STREET INCENTIVE DISTRICT, TO WAIVE ANY APPLICABLE COMPETITIVE BIDDING REQUIREMENTS, AND DECLARING AN EMERGENCY.

WHEREAS, the Council of the City of Bexley, Ohio (the "City") by its Ordinance No. 91-04 (the "TIF Ordinance") adopted January 25, 2005 designated an area of the City as an "incentive district" as defined in Ohio Revised Code ("R.C.") Section 5709.40, the boundaries of which "incentive district" are fully described in the TIF Ordinance; and

WHEREAS, The Columbus Association for the Performing Arts (the "Developer") is (i) the equitable owner of the land described in Exhibit A attached hereto under a 99-year lease, renewable forever, and (ii) the fee owner of the improvements on said land (together, the "Property"), and intends to construct or cause to be constructed on the Property certain improvements (the "Project") as described in Exhibit B; and

WHEREAS, the development of the Project will necessitate and will be enhanced by the construction of certain public infrastructure improvements (the "Public Infrastructure Improvements") described in Exhibit C; and

WHEREAS, it has been proposed that the City and the Developer enter into an Infrastructure Agreement (the "Agreement") substantially in the form attached hereto as Exhibit D to provide for annual reimbursements to the Developer for the costs associated with the completed Public Infrastructure Improvements, as those costs are limited in Exhibit C, only so long as the Developer is in compliance with the Agreement; and

WHEREAS, the City desires to pursue all reasonable and legitimate incentives measures to enable the Public Infrastructure Improvements to be constructed and recognizes that construction of the Public Infrastructure Improvements can be cost-effectively managed by the Developer during the Project; and

WHEREAS, the City desires to provide the Developer with incentives for construction of the Public Infrastructure Improvements consistent with the terms of R.C. Section 5709.40 *et al.*; and

WHEREAS, annual reimbursements for the costs associated with the completed Public Infrastructure Improvements will be made to the Developer solely from service payments received by the City pursuant to R.C. Section 5709.42 and deposited into the municipal public improvement tax increment equivalent fund (the "TIF Fund");

WHEREAS, it is unclear whether Section 59 of the City Charter requires that construction of the Public Infrastructure Improvements described in the Agreement be subject to competitive bidding; and

WHEREAS, given that (i) the estimated cost of the Public Infrastructure Improvements exceeds the cost for which the Developer can be reimbursed under the Agreement, and (ii) it is in the best interest of the Developer and the City for the Developer to construct or cause to be constructed the Public Infrastructure Improvements without delay, it is in the best interest of the City to waive any competitive bidding requirements that may be applicable to the construction of the Public Infrastructure Improvements for which the Developer can be reimbursed under the Agreement;

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

Section 1. That in consideration of the mutual covenants set forth in the Agreement substantially in the form attached hereto and made a part hereof, including but not limited to the annual reimbursements by the City to the Developer for the costs associated with the completed Public Infrastructure Improvements as provided therein, the Agreement hereby is approved and authorized with changes therein not inconsistent with this Ordinance and not substantially adverse to the City, and the Mayor and the City Auditor hereby are authorized to execute the Agreement and directed to take any further actions, and execute and deliver any further agreements, certificates or documents necessary to accomplish the granting of the annual reimbursements described in said Agreement, provided further that the approval of changes thereto by those officials, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof.

Section 2. That this Council hereby determines that it is in the best interest of the City to waive any competitive bidding requirements that may otherwise be applicable to the construction of the Public Infrastructure Improvements for which the Developer can be reimbursed under the Agreement, and this Council therefore waives any such requirements.

Section 3. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any decision making bodies of the City of Bexley which resulted in such formal actions were in meetings open to the public or in compliance with all legal requirements of the City of Bexley, Franklin County, Ohio.

Section 4. That this Ordinance is an emergency measure necessary for the immediate preservation of the public peace, health, safety or welfare, and shall take effect upon its passage and approval by the Mayor.

Passed: _____, 2016

Tim Madison, President of Council

Attest:

Bill Harvey, Clerk of Council

Approved: _____, 2016

Ben Kessler, Mayor

EXHIBIT A

PROPERTY

See attached legal description and Boundary Survey
Dated March 31, 2011
Prepared by Myers Surveying Co., Inc.

Tax Parcel No. 020-004847

EXHIBIT B

PROJECT

Description

The Project consists of restoring the Drexel Theatre both to full modern functionality and to its historic original 1937 appearance. The building will be re-roofed, the HVAC will be replaced and updated, and a 70' x 14' addition will be constructed to house the new restrooms. The iconic marquee and the Theatre's exterior façade will be rebuilt, re-lamped, and restored to their original appearance. So, too, the outer lobby and the inner lobby will be historically rehabilitated by exposing the original decorative ceilings, replacing the deteriorated flooring, and constructing a built-in Art Deco concession stand. In addition, the three theaters are to receive new seating and wall coverings as well as preserved decorative features. The projection booth will be re-built and updated, as will the space that previously housed the men's restroom.

Capital Investment

Contract Work for Roof and HVAC	\$ 190,000
Contract Work for Restrooms Addition	465,000
Contract Work for Public Infrastructure	46,181
Contract Work for Lobbies, Theatres, Projection Booth, and Support Spaces	754,000
Contract Work for Marquee	80,000
Contingency for Marquee, Lobbies, Etc. (15%)	125,100
Architect Fees	50,000
Engineering Fees	25,000
Contract for Projection Work	242,000
Contract for Finishes and Furnishings	108,000
Developer Fee (10%)	<u>208,528</u>
Total	\$2,293,809

EXHIBIT C

PUBLIC INFRASTRUCTURE IMPROVEMENTS

The Public Infrastructure Improvements that will benefit the Property consist of the demolition of certain existing public utilities or communication facilities (including, but not limited to, water mains, gas mains, sanitary sewers, storm sewers, electric service lines, telephone lines, cable communication lines, and the housing of such public utilities or communication facilities) presently located both on and off the Property, and the relocation or replacement of such public utilities or communication facilities.

The City-approved estimate of the construction cost for the Public Infrastructure Improvements to be completed by the Developer pursuant to this Agreement is \$46,181.00.

However, the portion of the cost of the Public Infrastructure Improvements to be reimbursed to the Developer under this Agreement shall not exceed \$40,000.00.

EXHIBIT D

INFRASTRUCTURE AGREEMENT