

ORDINANCE NO. 54 - 86

By: *Robert H. Smith*

An Ordinance to authorize the Mayor and Auditor to enter into an agreement with the Columbus and Southern Ohio Electric Company for the use of utility poles located within the City of Bexley, Ohio and to declare an emergency.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1. That the Mayor and Auditor of the City of Bexley are hereby authorized to enter into an agreement, a copy of which is attached hereto and made a part hereof, with the Columbus and Southern Ohio Electric Company for the use of utility poles located within the City of Bexley.

Section 2. That this Ordinance is an emergency measure necessary for the preservation of the public peace, health and safety, said emergency being that it is in the best interest of the City to obtain this agreement now because it does not include a provision for service charges, and shall go into effect on it's passage and approval by the Mayor.

Passed: *September 9*, 1986

J. J. Lockman
President of Council

Attest: *J. H. Dwyer*

Approved: *Sept. 9, 1986*

David H. Madison
David H. Madison, Mayor

*Sept. 9, 1986 - 1st reading
Susp. & Adopt.*

THIS AGREEMENT, made this 9TH day of September, 1986 by
and between Columbus and Southern Ohio Electric Company, an Ohio corporation, (herein called "Owner"), and The City of Bexley, (herein called "Licensee"),

WITNESSETH,

THAT:

WHEREAS, Owner operates and maintains an electric distribution system consisting of various pole lines extending in and through The City of Bexley, and

WHEREAS, certain streetlights, brackets and/or wires to serve Licensee's streetlights, hereinafter collectively called "attachments", owned by Licensee, are attached or are to be attached to certain poles of Owner, specified on Exhibit "B" of the "Contract for Providing Energy for Lighting Streets and Public Places" (herein called Exhibit "B") and attached hereto as a part hereof, and

WHEREAS, permission to make additions to or changes in the attachments may be requested from time to time by Licensee, and

WHEREAS, Owner is willing to permit Licensee on a nonexclusive basis to place and maintain said attachments on said poles to the extent hereinafter provided and in accordance with the provisions hereof.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto hereby agree as follows:

1. Poles Subject to Agreement; Nonexclusive License

In accordance with the terms and conditions of this Agreement, Owner grants to Licensee a nonexclusive license to use such poles of Owner as may be used or reserved for use by Licensee

at the date hereof and any other poles of Owner when brought hereunder in accordance with the procedure hereinafter provided, in the geographic area specified above. Owner shall have the right to grant, by agreement or otherwise to others not parties to this Agreement, rights or privileges to use any poles covered by this Agreement, and Owner shall have the right to continue and extend any such rights or privileges heretofore granted. The attachment privileges granted hereunder shall at all times be subject to such agreements with other parties. All poles covered by this Agreement shall be and remain the property of Owner regardless of any payment by Licensee toward their cost and Licensee shall, except for the rights provided in this Agreement, acquire no right, title or interest in or to any such pole.

2. Attachments Fees

No attachment fee shall be charged for these attachments provided said attachments do not interfere in any way with the Owner's poles or other facilities, correct voltage and secondary electric lines are available on the pole, the Owner is given prior written notice of said attachments, written Owner approval is given prior to actual attachment and Owner provides energy to said light fixtures pursuant to this Agreement.

3. Pole Attachment Permit

Exhibit "B" attached to and made a part of this Agreement as of the date of said permit shall cover all poles of Owner jointly used by Licensee on such date. If Licensee desires to make additional attachments to any pole of Owner, it shall make written application therefor by submitting a revised Pole Attachment Permit to Owner and if said Revised Permit is granted by Owner, it shall supersede all permits issued prior thereto and shall be considered a part of the agreement. Owner shall have the sole right to determine the availability of space on such pole for use by Licensee and shall be under no obligation to grant permission for its use by Licensee, except that such permission shall not be unreasonably withheld. If such permission is granted, Licensee shall have the right to use such pole in accordance with the terms of this Agreement.

4. Standards for Installation

All attachments and associated equipment of Licensee shall be installed in a manner satisfactory to Owner and so as not to interfere with the present or any future use which Owner may desire to make of its poles. All such attachments and equipment shall be installed and at all times maintained by Licensee so as to comply at least with the minimum requirements of the National Electrical Safety Code and any other applicable regulations or codes promulgated by state, local or other governmental authority having jurisdiction thereover. Licensee shall take any necessary precautions

by the installation of protective equipment or other means, to protect all persons and property of all kinds against injury or damage occurring by reason of Licensee's attachments on Owner's poles. Owner shall be the sole judge as to the requirements for the present or future use of its poles and equipment and of any interference therewith.

5. Installation of New Poles

In any case where Licensee proposes to install attachments on a pole to be erected by Owner in a new location, and in Owner's judgment, to provide adequate space or strength to accommodate such attachments (either at the request of Licensee or to comply with the aforesaid codes and regulations) such pole must be taller and/or stronger than would be necessary to accommodate the facilities of Owner and of other persons who have previously indicated that they desire to make attachments on such pole, or with whom Owner has an agreement providing for joint or shared ownership of poles, the cost of such extra height and/or strength shall be paid to Owner by Licensee. Such cost shall be the difference between the cost in place of a pole considered by Owner to be adequate for the facilities of Owner and the attachments of such other persons and the cost in place of a pole with excess height or strength required due to Licensee's attachments.

6. Pole Replacement

Where in Owner's judgment a new pole must be erected to replace an existing pole solely to adequately provide for Licensee's proposed attachments, Licensee agrees to pay Owner the total cost to Owner including all materials, labor and overheads, for setting the pole and removing the old pole, minus the salvage value of the removed pole. In the event that subsequent to the installation on any pole of Licensee's attachments Owner requires additional space or strength for its facilities and in Owner's judgment the pole would have sufficient size or strength for such facilities in the absence of Licensee's attachments, then Owner shall replace such pole and Licensee shall pay to Owner the amounts provided for in the preceding sentence. If a third party on the pole has previously loaned a portion of their space to the Licensee, so the Licensee may attach to the pole without a premature pole replacement, and then the third party later requires their full space, the Licensee shall have the option of either moving its attachments or reimbursing Owner in a manner consistent with the first sentence of this section. In all cases, Licensee shall also pay to Owner and to any other Owner of existing attachments on the pole the cost of removing each of their respective facilities or attachments from the existing pole and reestablishing the same or like facilities or attachments on the newly installed pole.

7. Rearrangement

If Licensee's desired attachments can be accommodated on existing poles of Owner by rearranging facilities of Owner or existing attachments thereon of any other person, or if because of Licensee's proposed attachments it is necessary for Owner to rearrange its facilities on any pole not owned by it, then in any such case, Licensee shall reimburse Owner and any such other person for the respective expense incurred in making such rearrangement.

8. Guying

Any additional guying required by reason of the attachments of Licensee shall be installed by and at the expense of Licensee and shall meet requirements of all applicable codes or regulations and if no code or regulation is applicable, or if Owner has established generally applicable guying standards more stringent than code requirements, shall meet Owner's standards. Use of Owner's guys and anchors by Licensee is not permitted.

9. Pole Inspection

- (a) Owner reserves the right to inspect each new or proposed installation of Licensee on Owner's poles. In addition, Owner may make periodic inspections, as conditions may warrant, for the purpose of determining compliance with Sections 4 and 10 hereof, and Licensee shall, on demand, reimburse Owner for the expense thereof. Owner's right to make any inspections and any inspection made pursuant to such right shall not relieve Licensee of any responsibility, obligation or liability assumed under this Agreement. These inspections are not to be confused with the General Inspection in Section (b) below.
- (b) Using the inception year of this Agreement (or the inception year of an assigned, assumed or prior Agreement covering the same area, if applicable), as the starting year, Owner may conduct a complete field inspection of its poles any time after the beginning of the fifth year and not more often than every fifth year thereafter for the purpose of verifying the number, location and character of all attachments of Licensee in the area covered by this Agreement. Owner shall give to Licensee at least thirty (30) days prior notice of such inspection and not less than fourteen (14) days prior to the scheduled date of such inspection Licensee shall advise Owner if Licensee desires to make a joint inspection with Owner. Licensee shall reimburse Owner for Owner's nonrecurring expenses incurred in making such inspection, whether or not Licensee elects to participate.

Owner shall upon request furnish a summary report of such inspection within a reasonable time after its completion. Nothing contained herein shall be construed as limiting Owner's right to inspect its poles at any time at no cost to Licensee.

10. Interference or Hazard

Whenever Owner notifies Licensee in writing or orally, with written confirmation, that in Owner's judgment the attachments of Licensee on any poles of Owner interfere with the use of such poles, the operation of equipment, or constitute a hazard to the service rendered, by Owner or any other persons licensed by Owner to use such poles, or are dangerous to employees of Owner or of such other persons or the public, or otherwise fail to comply with applicable codes or regulations, Licensee shall immediately remove, rearrange or change its attachments as directed by Owner. In the case of any such hazard or danger, such period shall not exceed ten (10) days from receipt of the first such notice. If the use of a different pole is thereby made necessary, application for its use shall be promptly made, and if in Owner's judgment a new or replacement pole is required, payment respecting such pole shall be made as provided in this Agreement. In case of a hazardous condition or other emergency which in Owner's judgment requires Owner to immediately remove or relocate the attachments of Licensee, Owner reserves the right, at Licensee's expense, without prior notice and with no liability therefor to remove or relocate such attachments as required. If the hazardous condition is not corrected within 30 days, Owner may remove or relocate Licensee's attachments at Licensee's expense and with no liability therefor.

11. Relocation or Abandonment of Poles

Owner reserves the right, without liability to Licensee or its subscribers, if any, to discontinue the use, remove, replace or change the location of any or all of its poles regardless of any occupancy of Owner's poles by Licensee. In the event of any such discontinuance, removal, replacement or change, not specifically provided for elsewhere in this Agreement, Licensee shall, at its sole cost and within such time period as Owner may request, which shall not be less than ten (10) days after written notice by Owner, make such changes in, remove, or transfer such of its attachments as may be necessary. If Owner abandons the use of any of such poles and Licensee fails to remove its attachments therefrom within the time specified by such notice, Licensee agrees that Owner may elect to convey title to such poles to Licensee and that upon receipt by Licensee of any such notice of election and a properly executed bill of sale of such poles to Licensee, such poles shall become the property of Licensee and Licensee will accept title thereto.

and pay to Owner the then value in place of such poles. Licensee further agrees that upon and after receipt of such bill of sale, Licensee shall be solely responsible for any and all liability, cost of expense arising thereafter out of the location, use or condition of such poles. Should Licensee remove its attachments within the ten (10) day period after Owner abandons a pole, and Owner must make a return trip to remove the pole, Licensee shall pay to Owner the total cost incurred by Owner of the return trip and pole removal.

Licensee may at any time abandon the use of a pole hereunder by removing therefrom all of its attachments and by giving written notice thereof to Owner unless Licensee has title to the pole as set forth above. The elimination of any attachment shall in no way reflect upon the Licensee's contractual obligation for electrical service at this location as specified in any other agreement with Owner.

12. Liability

Licensee hereby releases Owner from any and all liability for loss of or damage to the attachments of Licensee and for any interruption to or failure of the service rendered by Licensee in which such attachments are used, and Licensee hereby agrees to indemnify, hold harmless, and defend Owner from and against any and all loss, damage, cost or expense which Owner may suffer or for which Owner may be held liable because of interruption of Licensee's, its subscribers', if any, or others' service, or by reason of bodily injury, including death, to any person, or damage to or destruction of any property, including loss of use thereof, arising out of or in any manner connected with the attachments, operation, and maintenance of the facilities of Licensee on the poles of Owner under this Agreement, whether or not due in whole or in part to any act, omission or negligence of Owner or any of its representatives or employees (except insofar as such indemnity arising out of such injury or damage caused by the negligence of Owner or such representatives or employees may be found to be contrary to law, in which case this agreement of indemnity shall in all other respects be and remain effective and binding). BY THESE PRESENTS, LICENSEE EXPRESSLY and specifically waives any immunity to which it may be entitled under Section 35, Article 11 of the Ohio Constitution on Sections 4123.74 and 4123.741 of The Ohio Revised Code.

13. Easements and Permits

Licensee shall secure any right, license or permit from any governmental body, authority or other persons which may be required for the construction or maintenance of attachments of

Licensee. Owner does not grant, convey nor guarantee any easements, right-of-ways or franchises for the construction and maintenance of said attachments, Licensee hereby agrees to indemnify and save harmless Owner from any and all claims, including the expenses incurred by Owner to defend itself against such claims, resulting from or arising out of the failure of Licensee to secure such right, license, permit or easement for the construction or maintenance of said attachments on Owner's poles.

14. Default or Noncompliance

If Licensee fails to comply with any of the provisions of this Agreement or defaults in the performance of any of its obligations under this Agreement and fails within thirty (30) days, after written notice from Owner to correct such default or non-compliance, Owner may, at its option, forthwith take any one or more of the following actions: terminate the specific permit or permits covering the poles to which such default or non-compliance is applicable, remove, relocate or rearrange attachments of Licensee to which such default or noncompliance relates, all at Licensee's expense; decline to permit additional attachments hereunder until such default is cured; or in the event of any failure to pay any of the attachment fees or charges provided in this Agreement, or any other substantial default, or of repeated defaults, terminate this Agreement. No liability shall be incurred by Owner because of any of all such actions. The remedies provided herein are cumulative and in addition to any other remedies available to Owner under this Agreement or otherwise.

15. Prior Agreements

This Agreement terminates and supersedes any prior agreement, license or joint use affecting Owner's poles and Licensee's attachments covered hereby as of the date hereof, but such termination shall not reduce or eliminate the obligations of Licensee to make payment of any amounts due to Owner under any prior agreement.

16. Sale of Licensee's Facilities

This Agreement shall be binding upon and inure to the benefit of the parties hereto, and Licensee shall not assign, transfer, or sublet any of the rights hereby granted.

17. Performance Waiver

Neither party shall be considered in default in the performance of its obligations herein, or any of them, to the extent that

performance is delayed or prevented due to causes beyond the control of said party, including but not limited to, Acts of God or the public enemy, war, revolution, civil commotion, blockade or embargo, acts of government, any law, order, proclamation, regulation, ordinance, demand, or requirement of any government, fires, explosions, cyclones, floods, unavoidable casualties, quarantine, restrictions, strikes, labor disputes, lockouts, and other causes beyond the reasonable control of either of the parties.

18. Amendments, Modifications and Waivers

No amendments or modifications to this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the parties. No delay or omission in the exercise of any power or remedy herein provided or otherwise available to Owner shall impair or affect Owner's right thereafter to exercise the same.

19. Invalidity

If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable under any laws, rules or regulations or any governmental body or agency having jurisdiction thereof, any such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been incorporated herein.

20. Term of Agreement

This Agreement shall continue in force and effect for an initial term of one year from and after the date hereof and shall continue thereafter on a month-to-month basis until terminated at any time by either party giving to the other written notice at least thirty (30) days in advance of the termination date therein specified. Upon termination of this Agreement, as herein provided, Licensee shall remove its attachments from the poles of Owner without undue delay and complete such removal prior to the specified termination date.

21. Executed

This Agreement may be executed in two counterparts each of which shall be deemed to be an original.

22. Headings

Headings in this Agreement are inserted only for the convenience of the parties and shall not affect the interpretation of the intent of this Agreement.