

ORDINANCE NO. 35-00

By: John B. Rohyans

An Ordinance to authorize the Mayor and Auditor to enter into an agreement with the Bexley City School District Board of Education and Capital University regarding the use of Wolfe Park and Academy Park and to declare an emergency.

WHEREAS, the City, the Bexley School District and Capital have cooperated for many years in sharing athletic and recreational facilities; and

WHEREAS, the City leases portions of Wolfe Park and Academy Park from the City of Columbus and has made the use of the parks available to the Bexley School District and Capital University; and

WHEREAS, the City and the other parties wish to formalize their understandings regarding the use, maintenance and financing of improvements by entering into a written agreement covering such matters;

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

Section 1. That the Mayor and Auditor are hereby authorized and directed to execute and deliver the Agreement by and among the City, the Bexley School District Board of Education and Capital University, in the form attached to this Ordinance as Exhibit A and incorporated in this Ordinance by reference.

Section 2. That this Ordinance is an emergency measure necessary for the immediate preservation of the public peace, health and safety, said emergency being the need to provide uninterrupted use of the facilities and to perform seasonal maintenance, and shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: 5-23, 2000

Don H. Parks
President of Council

Attest: Paul A. Levin
Clerk of Council

Approved: 5/23/00, 2000

David H. Madison
David H. Madison, Mayor

4/25/00 First reading
5/9/00 Second Reading
5/23/00 Third reading.
Passed

AGREEMENT

This Agreement is entered into as of the ___ day of _____, 2000, by and among the City of Bexley, Ohio (the "City"), the Bexley City School District Board of Education (the "Bexley Schools"), and Capital University ("Capital").

WHEREAS, the City has leased certain property from the City of Columbus known as Wolfe Park and Academy Park (the "Premises") for a term of fifteen (15) years commencing June 25, 1997, together with five (5) year renewal options, pursuant to that certain Lease dated June 25, 1997, a copy of which is attached as Exhibit 1 and is incorporated in this Agreement by reference (the "Lease"); and

WHEREAS, the City has permitted the Bexley Schools and Capital to use the Premises for athletic and recreational purposes, and the parties have shared certain expenses incurred in improving and maintaining the Premises; and

WHEREAS, the parties want to continue to cooperate in the use, improvement and maintenance of the Premises consistent with past practice and to reduce their understanding to writing;

NOW, THEREFORE, subject to the terms and conditions contained herein, the parties agree as follows:

1. Use of the Premises. Premises shall be used exclusively for athletic and recreational purposes as permitted by the Lease. The City will schedule the use of the Premises in accordance with a use plan developed and revised from time to time by the parties. An initial use plan (the "Use Plan") has been agreed upon and is attached as Exhibit 2 and is incorporated in this Agreement by reference. Subject to the Use Plan, the parties shall cooperate in scheduling their respective uses in an effort to accommodate the needs of all parties to the extent possible. Any scheduling disputes which cannot be resolved by the City shall be determined by a majority vote of the three parties (each having one representative and one vote), it being the intention of the parties to achieve a fair and equitable use of the Premises. The City shall inform the other two parties promptly in writing of special events or seasonal or other usage of the Premises authorized, permitted, allowed or sanctioned by the City of Columbus or the City of Bexley.

2. Maintenance of the Premises. The City shall be responsible for general and customary maintenance of the Premises, which shall consist of fertilization, weed control, overseeding, mowing, field preparation and repair, and similar work reasonably necessary to maintain the recreational space in playable condition. The City shall submit a proposed budget for review and approval by the parties for such general and customary maintenance, specifying costs for labor, materials, and any outside contractor(s) expected to be needed. The direct costs of labor and materials incurred by or on behalf of the City in connection with the maintenance services described in the preceding sentence shall be shared by the parties on the following basis: (a) the cost of the annual program of fertilization, weed control and over seeding shall be allocated among the three parties as follows: City 50%, Bexley Schools 25% and Capital 25%;

(b) each party shall be responsible for any special preparation of a playing field required for any event, game or activity sponsored by it and shall return any portion of the Premises used by it to the City in the same general condition as existed prior to such use; (c) in the event that the City incurs expenses in connection with the clean-up or restoration of the Premises following any use, the City may assess a reasonable charge to the party sponsoring such use; and (d) the City may require a party to provide maintenance when one party is the principal user of a particular playing field, as in the case of the use of Clowson Field from approximately March 1 to May 10 of each year, when Capital, as the principal user, shall be responsible, at its own expense, for general maintenance of Clowson Field, including mowing and clean-up.

3. Capital Improvements. Prior to commencing any improvements to the Premises, the City will provide to the other parties information in reasonable detail regarding the planned improvements and cost thereof. All future improvements shall be established by agreement of the parties which approve and agree to contribute to an improvement, it being the intention of the parties that none of them is committed to approving any future improvements by virtue of signing this Agreement. If a party elects not to participate in the funding of an improvement, the City may deny such party the right to use the improved area or may assess an additional charge for its use. If a party which approves an improvement fails to pay its share of the improvement's cost, the City may, in its sole discretion, terminate the defaulting party's rights under this Agreement for cause pursuant to Paragraph 6 or terminate or curtail the party's use of the improvement. It is understood and agreed that a party's right to use a future improvement is dependent upon its sharing the cost thereof. Notwithstanding the foregoing, the City may, after consultation with the other parties, make improvements to the Premises, at its sole cost, without the consent of the other parties; and each of the Bexley Schools and Capital may make improvements to the Premises at its sole cost, with the consent of the City. Any revenue which the City receives from use of improvement(s) shall go into a separate fund maintained by the City. Money in such fund may be used for capital improvements to the Premises or for general and customary maintenance expenses for the Premises.

4. Indemnification. Each of the Bexley Schools and Capital shall indemnify, defend and hold harmless the City and the other parties and their respective employees, officers, agents and assigns, from and against any and all loss (including attorneys' fees), damage or liability asserted by or on behalf of any third party for injury to or death of a person or for loss or damage to property resulting from the use of the Premises by such party. Each party shall give prompt and timely notice to the City, and the City to the appropriate party, of any claim asserted or suit instituted by any person arising out of or in connection with the use of the Premises. Each party shall carry liability insurance and shall provide evidence of such insurance to the City. The City shall be named as an additional insured; and with respect to any other insurance coverage which may be available to the City, the insurance provided by such other party shall be primary and not contributory or excess.

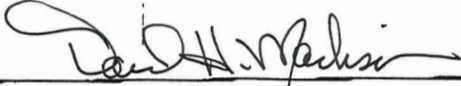
5. Non-discrimination. No party shall discriminate during the use of the Premises because of race, color, sex or national origin.

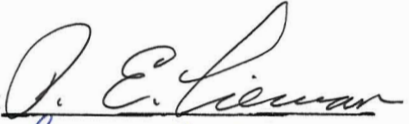
6. Term and Termination. Subject to the Lease, this Agreement shall be effective for successive one year periods beginning on January 1 and ending on December 31 of each year during the term of the Lease, with any party having the right to terminate this Agreement, with or without cause, by giving the other parties written notice by December 1 of any year, provided, however, that the termination of this Agreement shall not affect the obligations of any party under Paragraphs 2, 3 and 4 arising out of acts or omissions occurring prior to the effective date of such termination. Any and all amounts due by a party to the City as of effective date of such termination shall be immediately due and payable. In the event that this Agreement shall be terminated by the City as to any party without cause, the City shall pay to such terminated party, on a pro rata basis calculated on a 15 year amortization of such improvements, the unamortized cost of improvements to which the party contributed pursuant to Paragraph 3 above, including, without limitation, any payments received by the City from the City of Columbus under the Lease.

IN WITNESS WHEREOF each of the parties have caused this Memorandum of Understanding to be signed by its duly authorized representative to be effective as of the day and year first above written.

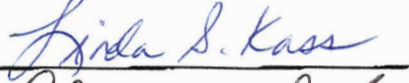
CITY OF BEXLEY, OHIO

BEXLEY CITY SCHOOL DISTRICT
BOARD OF EDUCATION

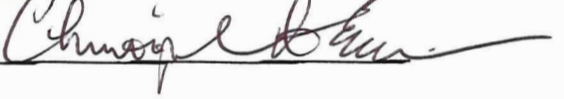
By: 

Superintendent: 

Name: City of Bexley

President: 

Title: Mayor

Treasurer: 

CAPITAL UNIVERSITY

By: 

Name: VERNON P. TRUESOME

Title: VICE PRESIDENT FOR RESOURCE MGMT.