

ORDINANCE NO. 62 -01

By: Rick Weber

An Ordinance to authorize the Mayor and Auditor to enter into a revised lease with the City of Columbus for property located at the southeast corner of Alum Creek Drive and East Main Street, also known as the Pump House Park site.

WHEREAS, the City currently leases property at the southeast corner of Alum Creek Drive and East Main Street (the "Property") from the City of Columbus; and

WHEREAS, the current lease, which is terminable by either party on 90 days' notice, needs to be replaced by a lease which is not terminable during the initial 15 year term in order to secure a grant from the State of Ohio;

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 enter into and execute, on behalf of the City, a revised lease with the City of Columbus for the Property, said lease to be in substantially the form attached hereto and made a part hereof.

Section 2. That this Ordinance shall take effect and remain in force from and after the earliest period allowed by law.

Passed: 9-25, 2001

Deane H. Porter
President of Council

Attest: Richard A. Levin
Clerk of Council

Approved: 9/25, 2001

David H. Madison
David H. Madison, Mayor

8/13/01 First Reading
9-25-01 Second Reading
Three Reading Rule Susp.
Passed

LEASE

This Lease is made and entered into as the 25TH day of OCTOBER, 2001, by and between the City of Columbus, a municipal corporation of the State of Ohio, acting by and through John R. Doutt, Director of the Department of Public Utilities, as duly authorized by virtue of Ordinance No. 2746-99, passed on 11/22/99, by the Council of the City of Columbus, Ohio (hereinafter "Lessor") and the City of Bexley, a municipal corporation of the State of Ohio, acting by and through David H. Madison, Mayor, and Richard A. Levin, Auditor, as duly authorized by virtue of Ordinance No. 43-99, passed on July 13, 1999, by the Council of the City of Bexley, Ohio (hereinafter "Lessee").

WITNESSETH:

That for the consideration hereinafter set forth the Lessor does hereby lease to the Lessee the real property in the vicinity of East Main Street and Alum Creek Drive, shown on the attached Exhibit "A" (hereinafter known as the "Premises").

NOW, THEREFORE, subject to the terms and conditions hereinafter contained, the parties hereto do hereby agree as follows:

1. TERM AND RENT

This Lease of the Premises shall be for a term of fifteen (15) years with two five-year options. The Lessee shall notify the Lessor 90 days prior to termination of the first renewal term of the Lease, as applicable, of its intent to exercise such option.

Rental payments will be \$1.00 per year with the Lessee assuming, subject to paragraph 3, all improvement costs and maintenance with respect to the Premises.

2. USE OF DEMISED PREMISES BY LESSEE AND LESSOR

The Lessee shall, subject to the provisions of this Lease, have the right to use the Premises for a landscaped green space for pedestrian use only and may make improvements to the Premises consisting of landscaping, seating and signage, with the written approval of the Lessor, which approval will not be unreasonably withheld.

The landscape plan developed for the Premises shall designate (i) the areas which can and cannot be landscaped due to the presence of subsurface tanks on the Premises, (ii) the landscaping, if any, permitted on exposed concrete areas (iii) the areas where vehicles are prohibited and (iv) routes of ingress to and egress from the tanks, it being the intention of the parties to develop a plan which will permit maximum landscaping of the site while permitting the Lessor access to the tanks, without damaging the landscaping.

The Lessee shall be responsible for maintenance of the landscaped areas of the Premises and shall keep them in a clean and safe condition during the term of the Lease. The Lessee shall be solely responsible for all claims, losses, expenses, liabilities or damages arising out of or in connection with the use of the Premises by the Lessee, its agents, employees, contractors, or invitees.

The Lessor reserves unto itself the right to continue to use the Premises for construction, operations and maintenance of utility facilities. The Lessor shall be solely responsible for, and shall have access to the Premises at all reasonable times to perform its duties with respect to, all costs relating to the operation, maintenance and replacement of all utility facilities located on the Premises, including, without limitation, the storm tank, storm overflow conduit, control house and sewer lines, and the compliance of all such facilities and operation with applicable laws and regulation. The Lessor shall return the Premises to their prior condition following any repair or replacement of such utility facilities.

The Lessor also reserves unto itself the right to use the area designated on the attached Exhibit A for the construction, operation and maintenance of a bicycle path. In constructing and maintaining the bicycle path, the Lessor will, to the extent reasonably practicable, attempt to design, construct and maintain the bicycle path to minimize its impact on the landscaping placed on the Premises by the Lessee; provided, however, that, with respect to any landscaping or other permitted improvements within the area designated as the bicycle path on Exhibit A, the Lessee assumes the risk that said landscaping and improvements may be destroyed or damaged without compensation by the Lessor, its officials, employees, agents or contractors.

Subject only to the limitations of the foregoing paragraph with respect to the bicycle path, the Lessor shall be solely responsible for all claims, losses, expenses, liabilities or damages arising out of or in connection with the use of the Premises by the Lessor, its agents, employees, contractors or invitees or compliance of the Premises with applicable laws and regulations, whether arising out of events prior to or after the date hereof.

3. TAXES AND ASSESSMENTS

It is understood between the parties that the Premises are currently exempt from real estate taxes. However, should all or any portion of said Premises become taxable during the term of this Lease as a result of Lessee having the use of said Premises, then the Lessee shall be responsible for all real estate taxes applicable thereto. The Lessor shall be responsible for all real estate assessments levied upon said Premises for the term of this Lease.

4. NONDISCRIMINATION

The Lessee will comply with all requirements imposed by or pursuant to regulations of Title VI of the Civil Rights Act of 1964 (78 State 241,252) and Executive Order 11246 during its use of the Premises. The Lessee shall not discriminate because of race, color, sex or national original in any manner during the Lessee's use of Premises.

5. **NOTIFICATION OF CLAIMS**

The Lessor and the Lessee shall give prompt and timely notice to one author of any claim made or suit instituted which in any way directly or indirectly, contingently or otherwise affects or might affect the Lessee or the Lessee's right to use Premises.

6. **ASSIGNMENT**

The Lessee shall not assign this Lease in whole or in part, nor sublet all or any part of said Premises without first obtaining written consent from the Lessor, which consent may be denied for any reason.

7. **TERMINATION**

This Lease may be terminated by either party, without assigning any cause, effective on the 90th day after written notice of termination has been given by the terminating party to the other party at the address set forth below. However, such termination of this Lease shall not take place prior to the conclusion of the initial fifteen (15) year term. In the event that the Lessor terminates this Lease, the Lessor shall pay to the Lessee the unamortized portion of the cost of all improvements, calculated on a 5 year amortization, made to the Premises by the Lessee.

- a. If to the Lessor:
City of Columbus
Department of Public Utilities
910 Dublin Road
Columbus, Ohio 43215-9060
Attention: Director

With a copy to:
City of Columbus
Department of Law
Real Estate Division
109 N. Front Street
Columbus, Ohio 43215
Attention: Chief Real Estate Attorney

- b. If to Lessee:
City of Bexley
2242 East Main Street
Bexley, Ohio 43209
Attention: Mayor

8. **GOVERNMENT REGULATIONS**

The Lessee at its sole cost and expense, shall comply with all applicable laws, and regulations of the Government of the United States, State of Ohio, and ordinances of general application of the City of Columbus with respect to the use, occupancy, construction, or maintenance of the Premises by the Lessee.

9. **PREVAILING WAGE**

As required by City Code Section 329.251, the Lessee shall in the construction of any improvements on the Premises pay prevailing wage rates as defined in Chapter 4115 of the Revised Code.

10. **ENTIRE LEASE AGREEMENT**

This Lease constitutes the entire agreement by and between the parties in connection with Lease of the Premises and no change, modification or waiver of such agreement shall be binding upon either party unless it is in writing and executed by the parties hereto:

IN TESTIMONY WHEREOF, the Lessor and the Lessee have caused this Lease to be signed in duplicate on the day and year above written.

CITY OF COLUMBUS
a municipal corporation

By: John R. Doult
John R. Doult
Director of Public Utilities

Constance J. Garish
Witness

Mark E. Koun
Witness

State of Ohio)
) SS:
County of Franklin)

On this 17th day of October, 2001, before me, a Notary Public in and for the jurisdiction aforesaid, personally came the above named John R. Doult, on behalf of the City of Columbus, who with full authority executed the foregoing Lease and acknowledged the signing of the same to be a voluntary act and deed for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

Jean B. Clark
Notary Public



(seal) JEAN B. CLARK
NOTARY PUBLIC - STATE OF OHIO
MY COMMISSION EXPIRES
10/21/2002

CITY OF BEXLEY, OHIO
a municipal corporation

Sara Chinnock
Witness

By: David H. Madison
David H. Madison, Mayor

Daniel J. Law

By: Richard A. Levin
Richard A. Levin, Auditor

State of Ohio)
) SS:
County of Franklin)

On this 25 day of October, 2001, before me, a Notary Public in and for the jurisdiction aforesaid, personally came the above named David H. Madison and Richard A. Levin, on behalf of the City of Bexley, who with full authority executed the foregoing Lease and acknowledged the signing of the same to be a voluntary act and deed for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

(seal)

Glenda A. Barlow
Notary Public

Approved as to Form:

GLEND A ARLENE BARLOW
Notary Public, State Of Ohio
My Commission Expires 8/10/05

Janet E. Jackson by AM 10-12-01
Columbus City Attorney Date

James H. Gross 10/31/01
Bexley City Attorney Date