

RESTATED AGREEMENT BETWEEN

WILLAMETTE UNIVERSITY AND CITY OF SALEM

THIS AGREEMENT is made and entered into this 24th day of September, 1982, by and between the CITY OF SALEM, OREGON, a municipal corporation, herein called "City" and WILLAMETTE UNIVERSITY, herein called the "University."

WHEREAS, the City and University entered into a five-year agreement on December 30, 1975, for joint use of the University ball fields; and

WHEREAS, that agreement has been modified by addenda in 1980; and

WHEREAS, the parties agree that it is in the best interest of both the University and City to integrate all agreements into one writing; and

WHEREAS, the City desires use of John Lewis Field ("JLF") and McCulloch Stadium by the City, including City sponsored programs, and Salem-Keizer School District, including District sporting competitions and recreational programs; and

WHEREAS, both the City and University have worked together to make certain improvements; and

WHEREAS, the City permitted the University to encroach into park property by relocating John Lewis Field fences; and

WHEREAS, the University desires to use portions of City's Bush's Pasture Park for athletic activities, auto parking accessory to University's use of JLF and Bush's Pasture Park, and other activities; and

WHEREAS, the improvements to JLF will require additional encroachments into Bush's Pasture Park and City suffers no harm by said encroachments; and

WHEREAS, University and City desire to amend and restate this agreement to expressly permit the additional encroachments and provide certain public access to JLF and McCulloch Stadium as set forth herein.

NOW, THEREFORE,

IN CONSIDERATION of the mutual promises and stipulations set out herein, University and City do hereby agree as follows:

The purpose of this agreement is to clarify and coordinate use of the City's Bush's Pasture Park and JLF for University activities and community programs and certain public use of JLF and McCulloch Stadium ("University Facilities") and permit necessary encroachments for improvements to University Facilities as set forth herein.

A. PROPERTY DESCRIPTION AND PRESERVATION OF PROPERTY RIGHTS
THEREIN

A description of the property covered by the terms of this Agreement is hereto attached, marked Attachment A, and by this reference made a part hereof.

City does not by the terms of this agreement acquire any right, title, interest, or estate in or to the fee simple title of University Facilities, and the use thereof by the City or the public is by and with the consent of University in accordance with the terms and provisions thereof.

University does not by the terms of this agreement acquire any right, title, interest, or estate in or to the fee simple title of said park property encroached by JLF fences or bleachers or

used for other University activities, and the use thereof by the University is by and with the consent of the City in accordance with the terms and provisions hereof.

B. SCHEDULING AND USE

All scheduling will be done by both parties working together. University activities shall have first priority for use of University Facilities. City programs shall have priority of use of Bush's Pasture Park. The Parties will collaborate in good faith on scheduling events at the facilities subject to this Agreement to ensure fair and efficient use.

C. MAINTENANCE

1. City responsibilities:

- a. City will perform all maintenance activities in Bush's Pasture Park, except for those areas within the encroachment areas identified in Attachment A.

2. University responsibilities:

- a. University will perform all maintenance activities in University Facilities, including the encroachment areas abutting JLF identified in Attachment A.

D. IMPROVEMENTS TO CITY TENNIS COURTS

1. On or before July 1, 2025, University, at its sole cost and expense, shall install wind screens on the City tennis courts adjacent to JLF as set forth in Attachment B.

University shall be responsible to maintain the windscreen and repair and replace them periodically as the parties mutually determine.

2. University and City are mutually interested in the installation of lighting on City tennis courts adjacent to JLF as set forth in Attachment B. University will determine if there are funds available and sufficient to install lighting after substantial completion of the projects described in Section E below. If University determines

there are available and sufficient funds, University and City will engage in good faith negotiations to enter into an agreement whereby the University would agree to pay for installation of lighting on the tennis courts in exchange for the City providing use of the tennis court by University at no cost.

E. PUBLIC USE OF FACILITIES

University intends to improve JLF by installing synthetic turf, additional lighting, safety netting, pedestrian and accessibility improvements, including fencing, as identified in Attachment B. University has prepared plans for these improvements to avoid any encroachments into Bush's Pasture Park to the extent feasible, however, some encroachments are necessary and permitted to allow the improvements to function and to protect the park.

To mitigate any potential impact on public park use caused by the encroachments, University agrees to permit public use of University Facilities as reasonable, subject to the following:

1. University use of University Facilities shall have first priority in the event of a scheduling conflict.
2. Public use as used in this agreement shall be limited to use by:
 - a. Salem-Keizer School District, as set forth in an agreement to be negotiated by University and Salem-Keizer School District, with a minimum of 10 years of access to University Facilities without rental fees but subject to University having first priority for scheduling;
 - b. City sanctioned and sponsored programs, including sporting competitions, and recreational programming, with rental fees waived for the annual Salem kids' relay, and

3. University parking will be available and its use encouraged for guest parking for University events at Bush's Pasture Park, including shuttle service from University parking areas to JLF as needed;
4. University will provide, or require its tenants to provide, staffing/parking attendants at the Bush Park Mission Street parking lot for all large University event at the park to mitigate any issue;
5. University shall explore a partnership with Cherriots and look for covered bike parking and other opportunities to encourage alternative modes of transportation other than personal vehicle use;
6. The parties shall conduct an annual review of impacts on the park and surrounding community, such as parking, noise, and light impacts. Unintended impacts shall be addressed before this Agreement is renewed, and;
7. University will encourage use of best management practices and technologies in the improvements to JLF to mitigate any potential environmental impacts of the project.

F. TERM AND TERMINATION

This agreement shall commence on January 1, 1982 and shall be in effect for a one-year period through December 31, 1982. This agreement is automatically renewed for additional one-year terms unless terminated as provided in this Agreement.

Either party may terminate this agreement upon giving written notice of proposed termination to the other party by November 1 of any year for which this agreement is in effect. Upon such notice, the agreement shall terminate no sooner than November 30 of that notice year. The terminating party may specify a later termination date if such later date is acceptable to the other party.

Nothing in this section is intended to prohibit the termination of the agreement by a party on account of material breach by the other party. In the event of such breach, the breaching party shall be given 30 days' written notice by the other party and may cure such breach within that period. If the breach is cured within that period to the satisfaction of the nonbreaching party, the termination notice shall be withdrawn and the agreement shall continue.

This agreement may be modified by the mutual agreement of the parties, expressed in writing, and signed by the parties.

3. LIMITATION OF LIABILITY

The City, its officers, agents and employees are not agents of University, and nothing herein is intended to create or be construed to create any such relationship. The University, its officers, agents and employees are not agents of City, and nothing herein is intended to create or be construed to create any such relationship.

Each party shall sign the other parties' standard terms of use for a space reservation or use.

IN WITNESS WHEREOF, the City and the University have caused this restated agreement to be executed in their respective names by their duly authorized representatives as of the date last signed below.

WILLAMETTE UNIVERSITY:

CITY OF SALEM,
OREGON:

Stephen E. Thorsett, President

Keith Stahley, City Manager

Date: _____

Date: _____