

AGREEMENT

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 the 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, City of Salem desires use of John Lewis Field for general public use and access to use a quality baseball field, general public access to the area, and suffers no harm by said encroachment; and

WHEREAS, both jurisdictions 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 City provided \$5,000 to purchase fencing; and

WHEREAS, the University desires to use portions of City's Bush's Pasture Park for cross country, soccer, La Crosse, auto parking, and other activities;

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 University's facilities for University activities and community programs. Through scheduling by the University the recreational needs of the citizens' interest groups, such as Babe Ruth, Little League, and American Legion, as well as other recreational uses will be met. Through scheduling by the City the needs of the University for activities such as soccer, La Crosse, cross country, as well as other activities will be met.

A. PROPERTY DESCRIPTION AND PRESERVATION OF PROPERTY RIGHTS THEREIN

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

The City of Salem does not by the terms of this agreement acquire any right, title, interest, or estate in or to the fee simple title of said described premises, and the use thereof by the City is by and with the consent of Willamette University in accordance with the terms and provisions thereof.

Willamette 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 John Lewis Field 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. Willamette University activities shall have first priority for use of University

facilities. City programs shall have priority of use of City facilities. A specific schedule shall be developed by the City and by the University outlining all uses. The schedule shall be shared, resolved, and finalized in January of each year.

C. MAINTENANCE

1. The City responsibilities:

- a. City will provide mowing for the John Lewis Field area between May 15 and August 15 annually.
- b. The City will fertilize the John Lewis Field area in conjunction with Bush's Pasture Park.
- c. City will perform all maintenance activities in Bush's Pasture Park.

2. Field responsibilities of the University include:

- a. All scheduling of John Lewis Field and University properties.
- b. Bringing the John Lewis Field area into playable condition by the start of each scheduling season.
- c. Watering, mowing, and general maintenance of the John Lewis Field area from August 16 to May 14.
- d. Watering and general maintenance of the John Lewis Field area from May 15 to August 15 annually.
- e. Willamette University will provide field preparation of John Lewis Field during periods of scheduling University activities and community use at no cost to the City of Salem.
- f. Provisions of normal garbage disposal for scheduled activities.
- g. Other normal maintenance of field house and area outside of field areas.
- h. Normal custodial duties and supplies, excluding bath towels, to the shower and locker room facilities will be maintained by the University.

D. 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 Director of Regional Parks and Recreation Agency for the City, and the President of Willamette University.

E. LIMITATION OF LIABILITY

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

F. DAMAGES

The University shall indemnify and hold harmless the City from any claims or cause of action for damage to property of others or for injury

or death of any person or persons other than employees, arising out of the use of the facilities when that use is an activity of or sponsored by Willamette University.

To the extent it lawfully may under the Constitution and laws of the State of Oregon, the City shall indemnify and hold harmless the University from any claims or cause of action for damage to property of others or for injury or death of any person or persons other than employees, arising out of any negligent act, error or omission of the City, its officers, employees, or agents.

Willamette will check the field daily and immediately report any substantial damage to the Athletic Director at Willamette University and Director of Regional Parks and Recreation Agency. The University shall be responsible for the repair of damages that occur from the use of the facilities by Willamette University or groups that it specifically sponsors. The City shall be responsible for the repair of damages that occur from the use of the facilities by the City. Groups not specifically sponsored by either the University or the City shall be responsible for all damages caused to the facilities.

Either party may immediately and unilaterally restrict any group from using the facilities if such group's use of the facilities caused damage or in any other way was irresponsible or illegal.

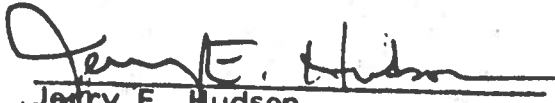
G. ATTORNEY FEES

If legal action is instituted to enforce any right or obligation accorded either party under this lease, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable attorney fees including attorney fees on appeal to any appellate court.

IN WITNESS WHEREOF, the City and the University have caused this

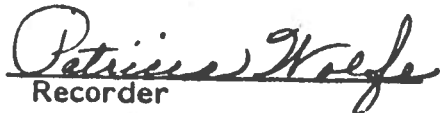
agreement to be executed in their respective names by their duly
authorized representatives as of the day and year first above written.

WILLAMETTE UNIVERSITY:


Jerry E. Hudson
President

CITY OF SALEM, OREGON:

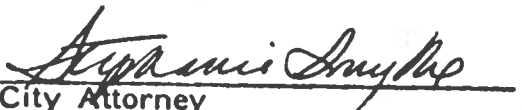

Mayor

Attest: 
Recorder

Approved:


Director, Regional Parks and
Recreation Agency

Approved as to Form:


City Attorney

FOR MEETING OF: September 20, 1982

TO: Mayor and City Council

AGENDA ITEM # 14N

THRU: Ralph Hanley, City Manager

COUNCIL ACTION: Adopted report.

FROM: Robert L. Maxey, Director 
Regional Parks and Recreation Agency

SUBJECT: Agreement with Willamette University

ISSUE:

An update agreement between the City and Willamette University for use of each jurisdiction's facilities at Bush's Pasture Park needs Council approval.

BACKGROUND:

1. The City and Willamette University have had an agreement for use of each jurisdiction's facilities at Bush's Pasture Park since 1975. In 1980 an addendum was added to the agreement which clarified each jurisdiction's maintenance responsibilities. This agreement, which has been successful in operation, ended on June 30, 1981.
2. Since the termination date of this agreement, staff from both jurisdictions have met and developed a new agreement. Use of each others facilities at Bush's Pasture Park has continued during this period.

FACTS AND FINDINGS:

1. This agreement is similar in content to the previous contract with most changes updating and clarifying each jurisdiction's responsibilities.
2. Highlights of the agreement include:
 - a. City of Salem Will:
 - 1) Mow John Lewis Field May 15, to August 15.
 - 2) Fertilize John Lewis Field and
 - 3) perform all maintenance activities in Bush's Pasture Park.
 - b. Willamette University Will:
 - 1) Schedule John Lewis Field for University and community use.
 - 2) Water and do general maintenance of John Lewis Field May 15, to August 15.
 - 3) Provide field preparation of John Lewis Field for community and University uses at no cost to the City of Salem.
 - 4) Provide garbage disposal and custodial services at John Lewis Field and its structures.
3. This agreement shall be in effect for a one year period and is automatically renewed for additional one year terms unless terminated as allowed within the agreement.

RECOMMENDATION: Council approve the contract between the City and Willamette University and authorize the Mayor to sign.


Ed Jochims, Recreation Superintendent

bb/8/25/82

