

7/1/95 -
6/30/96

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF BUNCOMBE

THIS AGREEMENT is entered into this 30th day of May, 1996, by and between the City of Asheville, a municipal corporation organized and existing under the laws of the State of North Carolina (hereinafter referred to as "City") and Asheville City Board of Education (hereinafter referred to as "City Schools").

W I T N E S S E T H :

WHEREAS, the City and the City Schools have cooperated in the sharing of their separate facilities for the provision of educational, athletic and other programs; and

WHEREAS, the parties desire to continue these cooperative efforts and to set forth that cooperation in an agreement; and

WHEREAS, N. C. Gen. Stat. sec. 160A-461 authorizes such agreements;

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Performance by the City. In exchange for the provision of certain City Schools facilities to the City, as set forth hereinafter, the City agrees to provide City Schools with the following:
 - a. Space in the basement of the Municipal Building for use by the Maintenance Division of City Schools, with said space being described as approximately 6,687 square feet in the western portion of the basement.
 - b. Provision of one room in W. C. Reid Center for the program known as "Metro School," which presently operates five days per week during the school year, with utilities and janitorial services provided without additional fee.
 - c. Use of Deaverview Park for baseball games for Asheville Middle School.
 - d. Organization and administration of the "After School Program" at all elementary schools that are part of the City Schools' system.
 - e. Organization and administration of the Summer Day Camp Program at all elementary schools in the City Schools' system, except for at Isaac Dickson Elementary School.



- f. Organization and administration of the program known as "Summer Intercession" for the year-around school program at Hall Fletcher Elementary School.
 - g. Use of various other City parks facilities during the school year, upon request by City Schools and approval of the scheduling by the City, such as, but not limited to, the use of Memorial Stadium for football and soccer programs of the City Schools.
2. Performance by City Schools. In exchange for the provision of certain City facilities to City Schools, as set forth hereinbefore, City Schools agrees to provide the City with the following:
- a. Use of Asheville Middle School for the City's volleyball league.
 - b. Use of Griffin Arena, Asheville Middle School and Asheville High School gymnasiums, which are designated as the "old boys and girls gymnasiums," for the City's Hi Neighbor Volleyball Tournament.
 - c. Use of the gymnasium located at Asheville High School known as the "old boys gymnasium," Claxton Elementary School gymnasium and Vance Elementary School gymnasium for the City's adult basketball program.
 - d. Use of the Hall Fletcher Elementary School gymnasium and Vance Elementary School gymnasium for the City's youth basketball program.
 - e. Use of Vance Elementary School ballfield for the City's adult softball and youth baseball and youth football programs.
 - f. Use of Hall Fletcher Elementary School's ballfield for practices for the City's youth baseball program.
 - g. Use of the track at Asheville High School for the "Hershey Track Meet."
 - h. Use of City School buses for the City's Summer Day Camp and Playground programs, according to the memorandum attached hereto as Exhibit A.
3. Term. The initial term of this Agreement shall commence on July 1, 1995, and shall end on June 30, 1996, but shall renew automatically on an annual basis unless either party provides to the other party a thirty (30) days written notice that it desires to terminate this Agreement or portions of this Agreement.

4. Schedules. The parties agree to schedule activities at the facilities described above as follows:

a. On or before August 15 of each year, each party shall provide the other party with anticipated dates and times of use for the time period from September 1 through May 31 of that year for use of the facilities as described in Sections 1 and 2 hereinabove. The party receiving the proposed schedule shall provide the other party with notice of any conflicts with the proposed schedule or other problems regarding the proposed schedule on or before September 1 of each year.

b. On or before April 1 of each year, each party shall provide the other party with anticipated dates and times of use for the time period from June 1 through August 31 of that year for use of the facilities as described in Sections 1 and 2 hereinabove. The party receiving the proposed schedule shall provide the other party with notice of any conflicts with the proposed schedule or other problems regarding the proposed schedule on or before May 1 of that year.

c. Each party agrees that the other party shall have first priority regarding the use of the other party's facilities whenever that party is not using its facilities.

d. If any event is cancelled for whatever reason, notice will be given as soon as possible to each party in regard to rescheduling the event.

5. Maintenance. Each party shall be responsible for the maintenance of the facilities which it owns, except that each party shall provide cleanup and routine maintenance of the facility which it uses for each program. During the first two weeks of January each year, each party will provide a list of non-routine maintenance requests to be performed during the next upcoming fiscal year. These items could include general operating or capital requests. Both parties will then meet to discuss possible areas for cost sharing associated with joint use of facilities.

6. Fees. As the parties are exchanging uses of their facilities, there will be no additional fees charged for the use of these facilities by either party.

7. Insurance.

- a. The City shall provide City Schools with evidence of its self-insurance program for general liability and property damage coverage.
- b. The City Schools shall provide the City with certificates of insurance for general liability and property damage coverage.

8. Hold Harmless and Indemnification.

- a. To the extent permitted by law, each party shall indemnify and hold harmless the other party from and against any and all claims, actions, causes of actions or liability for damages due to personal injury and/or property damage arising out of or resulting from the negligent acts or omissions of its officers or employees in the performance of this Agreement. Nothing contained herein shall constitute a waiver of the defense of governmental immunity on the part of the City or City Schools.
- b. Each party shall comply with the provisions of the Americans With Disabilities Act, and all rules and regulations promulgated thereunder, in the provision of access to the facilities and programs it owns and operates. To the extent permitted by law, each party hereby agrees to indemnify the other party from and against any and all claims, actions, causes of actions or liability for damages, injunctive relief or other remedies arising out of or resulting from the failure of that party, its officers or employees, to comply with the provisions of the Americans With Disabilities Act and all rules and regulations promulgated thereunder.

9. Compliance With Laws. Each party shall comply with all state, federal and local laws, and rules or regulations promulgated thereunder, governing that party's performance of this Agreement.

10. Conflicts. To the extent that any prior agreement between the parties regarding the use of their facilities conflicts with this Agreement, those agreements, or portions of those agreements, are superseded by this Agreement.

11. Contracts. The contacts for each party are as follows:

- a. City:
City of Asheville Parks & Recreation Director
Post Office Box 7148
Asheville, North Carolina 28802
(704) 259-5800
- b. City Schools:
Assistant Superintendent for Business and Support
Services
Post Office Box 7347
Asheville, North Carolina 28802
(704) 255-5355

12. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the matters set forth herein. This Agreement may not be modified or amended except in writing, signed by each of the parties hereto.

13. Governing Law. This Agreement is entered into in the State of North Carolina and shall be construed under the statutes and laws of the State of North Carolina.

14. Severability. Should any provision or provisions contained in this Agreement be declared by a court of competent jurisdiction to be void, unenforceable or illegal, such provision or provisions shall be severable and the remaining provisions hereof shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

Attest to:

CITY OF ASHEVILLE

Margalen Boulson
City Clerk
(Corporate Seal)

By: James L. Westbrook, Jr.
James L. Westbrook, Jr.
City Manager

Attest to:

ASHEVILLE CITY BOARD OF
EDUCATION

G.W. [Signature]
City Clerk ~~SECRETARY~~
(Corporate Seal)

By: Carol Matthews
Carol Matthews
Chairman

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Notary Public of the County and State aforesaid certify that Magdalen Burleson personally came before me this day and acknowledged that she is the City Clerk of the City of Asheville, a municipal corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its City Manager and attested by herself as its City Clerk.

Witness my hand and notarial seal this ^{3rd 9th} ~~20th~~ day of ~~May~~ June, 1996.

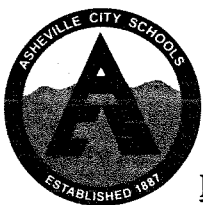
Gail B. Waddell Janet M. Rhodes
Notary Public
My Commission Expires: July 2, 1996
10-3-98

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Notary Public of the County and State aforesaid certify that E. Wayne Jordan personally came before me this day and acknowledged that he is the Secretary of Asheville City Board of Education, and that by authority duly given and as the act of the Board the foregoing instrument was signed in its name by its Chairman and attested by self as its Secretary.

Witness my hand and notarial seal this 20th day of May, 1996.

Gail B. Waddell
Notary Public
My Commission Expires: July 2, 1996



Asheville City Schools

Administrative Offices • 16 South Biltmore Avenue • P.O. Box 7347 • Asheville, North Carolina 28802

EXHIBIT A - (EXAMPLE ONLY - COSTS ARE SUBJECT TO CHANGE)

MEMORANDUM

To: Mr. Irby Brinson, City of Asheville Parks & Recreation
From: Timothy F. Amos
Date: April 7, 1995
Subject: Use of Asheville City Schools Activity Buses

We are pleased to loan your summer program two (2) activity buses (#24 and #26) owned by the school system subject to the items listed below. Vans are excluded from this agreement and are not to be used by Parks & Recreation. If you agree, please have this agreement signed by the appropriate city official and return it to me.

1. Parks & Recreation (P&R) agrees to pay Asheville City Schools (ACS) a total of \$1.00 per mile (each) for use of two activity buses (#24 and #26) during non-school days (traditional calendar) in the summer of 1995. This payment does not include driver costs or fuel, which must be furnished by P&R. A cost analysis is enclosed. The total amount is due and payable no later than September 1, 1995.
2. It is the responsibility of P&R to accurately log mileage, and P&R will be responsible for payment for mileage which cannot be accounted for otherwise.
3. A pre- and post-inspection of each bus will be made jointly with P&R and ACS personnel. P&R will be responsible for paying for the repair of any damages to the bus(es) during the period of use.
4. Hall Fletcher Elementary and the Accelerated Learning Center, the ACS year-round schools, shall always have first priority in scheduling field trips.
5. The Buncombe County Bus Garage has set dates for summer maintenance and the buses will be grounded on those dates.
6. ACS reserves all rights to use the bus(es) with 24 hours notice. If the bus(es) cannot be located, P&R will pay the full rental cost of bus(es) needed to meet the needs of ACS.
7. The City of Asheville must provide evidence of its self-insurance program.
8. P&R agrees to employ only activity bus drivers who fully comply with the new federally-mandated drug and alcohol testing program.
9. The following person is the P&R contact person who will be able to locate the bus(es) at any time:
Name: _____
Phone: _____

Agreed to by: _____ Title _____
Signature

Print Name: _____

Date: _____