



**CITY OF BELLE ISLE, FLORIDA  
CITY COUNCIL AGENDA ITEM COVER SHEET**

**Meeting Date:** October 3, 2017

**To:** Honorable Mayor and City Council Members

**From:** B. Francis, City Manager

**Subject:** Use of Wallace Field by Cornerstone Charter Academy (CCA)

**Background:** CCA has requested use of the Wallace Field for athletic activities, specifically for football practice. Currently, CCA practices on their game field. This causes maintenance issues for CCA because the game field has to be repaired prior to a game. CCA has also offered to “grade” the Wallace field at their expense if the City will allow the use.

The City Council directed the City Manager to draft an agreement for Council review for use of the Wallace Field by CCA. The draft is enclosed.

**Staff Recommendation:** Direct the City Manager and City Attorney to finalize the agreement for review and work with CCA staff and Counsel on the terms of the Agreement.

**Suggested Motion:** None needed. Just a consensus of Council to Continue to move toward an agreement.

**Alternatives:** Do not move forward and deny the request of CCA.

**Fiscal Impact:** None to the City that is not already incurred. CCA has offered (prior to this meeting) to make improvements to the field at their expense.

**Attachments:** Draft agreement

AN AGREEMENT BETWEEN CORNERSTONE CHARTER ACADEMY AND CITY OF BELLE ISLE FOR THE PURPOSE OF ALLOWING CORNERSTONE CHARTER ACADEMY TO USE THE WALLACE STREET FIELD AND ESTABLISHING CONDITIONS FOR USE

THIS AGREEMENT, made this \_\_\_\_ of \_\_\_\_\_, 2017 by and between the Cornerstone Charter Academy (hereinafter the "CCA") and the City of Belle Isle (hereinafter the "City").

RECITALS

1. Florida Statute 163.01 authorizes governmental entities to enter into written agreements for the performance of any or all functions and activities that either party, its officers or agents, has the authority to perform on its own. The agreement may provide that the entities cooperate in the construction, improvement, operation and maintenance of facilities.
2. The City owns real property commonly known as Wallace Field ("Field") that is zoned Public Buildings District (PUB) which permits Open Space/ Recreational Facility and that is currently not being put to any beneficial use.
3. CCA does not have adequate practice facilities at this time.
4. CCA desires to improve the Field for use as a practice field for its athletic programs.
5. The City has agreed to allow the CCA to use the Field until such time as the City determines that the Field property should be used for other purposes on the terms and conditions set forth below.

AGREEMENT

In consideration of the mutual covenants of CCA and City, each to the other giving, CCA and City do hereby agree as follows:

Section 1. Construction, Maintenance and Repair. The City grants CCA the exclusive right and privilege to conduct practice for its athletic programs, and other uses approved by the City, on the Field, and all associated rights to use the Field for that purpose. The CCA is responsible for costs associated with the construction, maintenance, upkeep and repair of the Field as agreed to with the City.

- a. The Field is subject to review and approval under Belle Isle Municipal Code Section 54-83 as a permitted to use subject to site plan review. Approval of the Agreement does not constitute approval of the intended use. CCA shall prepare a site plan for the Field for submission to the City Planning and Zoning Board for approval. The Site Plan will be approved by the City prior to submission. The City will be the applicant and be responsible for completing the application for site plan approval.
- b. CCA will be responsible for the construction and improvements of the Field according to the approved Site Plan. The cost of the construction and improvements will be the responsibility of CCA.

- c. The City will maintain the appearance and general condition of the Field. Costs to maintain the Field will be divided equally between CCA and the City. The City will prepare an itemized invoice for CCA for maintenance of the Field. The invoice will be paid within 30 days of receipt by CCA.

## Section 2. Operation.

- a. Priority of Use. CCA is authorized to conduct practice for its athletic programs, and other uses approved by the City, on the Field at times scheduled by CCA. Use of the Field by CCA will be during daylight hours only. The City will have priority to use the Field for City purposes; however the City will coordinate with CCA for scheduling of the Field. The City may also close the Field to for maintenance (by the City or CCA) or for an emergency.
- b. Fielding and Traffic. The parties anticipate that the Disc Golf Course will bring additional vehicular traffic to the area. Parking will only be allowed on CCA property (CCA parking lots). Vehicles, other than official City vehicles, or CCA vehicles necessary to transport equipment to and from the Field, will not be allowed unless written permission is given by the City. Unauthorized vehicles parked at and around the Field will be cited and/or towed at the owner's expense. Drop off and pick up of students at the Field will be allowed as long as the adjacent property owners have access to their property. If traffic, due to drop off or pick up, becomes a nuisance, the City will notify CCA and the practice will be discontinued. It is the responsibility of CCA to convey these rules to the students, faculty, and parents.

Section 3. Compliance with Laws. CCA shall be responsible for compliance with all federal, state and local laws, orders and regulations in connection with its use of the Field.

Section 4. Insurance. CCA, at its cost, shall provide liability coverage in the amount of One Million and No Cents (\$1,000,000.00) Dollars per occurrence, and Three Million and No Cents (\$3,000,000.00) Dollars in the aggregate. All insurance shall be placed with companies admitted to do business in the State of Florida or which shall have an AM Best rating of at least an "A". The City must be a certificate holder on any policy of insurance purchased by CCA in compliance with this Agreement, and it is entitled to receive a copy of any policies of insurance within thirty (30) days of the effective date of the policy. CCA shall obtain the insurer's agreement to give not less than thirty (30) days advance notice to the City before cancellation, expiration or alteration of any policy insurance. CCA agrees to maintain such policies of insurance during the term of this Agreement, and any failure to do so will constitute a breach of the terms of the Agreement. The City shall be named as an additional insured and said policy will be primary over any other collectible insurance for any liability arising out of claims in connection with this Agreement.

Section 5. Indemnification. CCA and the City agree to be fully responsible for its own acts or omissions and its own agents, contractors, servants, employees, licensees, or invitees, and any acts of negligence, or its agents' acts of negligence when acting within the scope of their employment, and agrees to be liable for any damages resulting from said negligence. Each Party shall indemnify and save the other

Party harmless from and against, and shall reimburse the indemnified Party for, all liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments and expenses, whether founded in tort, contract, or otherwise, including attorney's fees and costs for any act or neglect of the indemnifying Party in connection with the respective Party's obligation under this Agreement. Nothing contained herein shall be deemed a waiver by the City or Academy of its immunities provided by law, including those immunities set forth in Section 768.28, Florida Statutes. Notwithstanding the above, nothing in this provision shall operate to release either the Licensor or Licensee from its own affirmative duties with respect to this Agreement, and neither party is obligated to indemnify the other party for the other party's wrongful or tortious conduct.

#### Section 6. Term.

- a. The term of this agreement shall be ten (10) years; provided, however, that the City may terminate this Agreement prior to its expiration with ninety (90) days prior written notice when the City determines that it is necessary and convenient to sell the Field, or use it for some other purpose. The written notice shall specify the termination date of this Agreement, which date must be no less than ninety (90) days after the date of this notice. This Agreement may otherwise be terminated upon the mutual agreement of the governing bodies of both the CCA and the City, or, without such agreement, in the event of a material breach of the terms and conditions of the Agreement by one of the parties. A material breach is considered to have occurred if, after receipt of written notice from the non-breaching party, the breaching party fails to cure the breach, or take responsible steps to cure the breach, within thirty (30) days after the date of the written notice.
- b. This Agreement shall automatically renew for additional ten (10) year periods unless either party delivers written notice to the other party of its intent not to renew no less than ninety (90) days prior to the expiration of the current term.
- c. Upon termination of this Agreement, the CCA shall remove all equipment and leave the Field in good condition, wear and tear due to normal use excepted.

Section 7. Attorney Fees. In the event of any action to enforce the terms of this agreement, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements, its reasonable attorney fees at arbitration, trial and on appeal.

#### Section 8. Miscellaneous.

- a. This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and permitted assigns.
- b. Neither the Agreement nor any of the rights, interests, or obligations under this Agreement shall be assigned by any party without the prior written consent of the other parties.
- c. Nothing in this Agreement, express or implied, is intended or shall be construed to confer on any person, other than the parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.

- d. This instrument may be amended only by an instrument in writing executed by all the parties, which writing must refer to this instrument.
- e. The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that the other parties shall be entitled, in addition to damages, to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.
- f. If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of the Agreement shall not be in any way impaired.
- g. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

IN WITNESS WHERE OF, the City and CCA have executed this agreement pursuant to due authority, as evidences by the signatures of the duly appointed representatives of each entity below.