



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

Meeting Date: January 15, 2019

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: Wallace Field Design Elements and Use Agreement

Background: The City Council held a workshop on November 30, 2018 to discuss what design elements are to be added to Wallace Field. These elements will be required to be on the site plan developed by Cornerstone Charter Academy (CCA) as part of the Use Agreement. At the workshop, the City Council consensus was that the open field concept design by CCA was acceptable for a practice field and track; however, additional elements that the Council wanted to see in the site plan are:

1. Irrigation system
2. Drainage
3. Fitness Equipment around the track
4. Benches around the track
5. Bike Racks
6. Bat Houses
7. Gate between CCA property and Wallace Field (in existing wall).
8. Defined Parking area

The Council and neighboring residents also expressed concern regarding control over the field when the agreement was signed.

In the Agreement, there are several paragraphs that determine control of the field:

1. Section 3 (a): Restrictions
2. Section 3 (b): Non-Exclusive Use
3. Section 3 (c): Parking and Traffic

The Agreement even allows for the City to have priority by notifying CCA one day prior. By these terms, even if CCA "booked" the field for an extended period of time, then the City could use the field for whatever reason by giving a one-day notice.

Staff Recommendation: Approve the agreement

Suggested Motion: I move we approve the agreement with CCA for use of the Wallace Field.

Alternatives: Do not approve.

Fiscal Impact: TBD. Part of the agreement is for CCA to develop the field at their expense.

Attachments: Use Agreement

AGREEMENT
FOR NON-EXCLUSIVE USE OF WALLACE FIELD

THIS AGREEMENT FOR NON-EXCLUSIVE USE OF WALLACE FIELD (the “Agreement”) is made this ____ day of _____, 2018 by and between the City of Belle Isle, a Florida municipal corporation whose mailing address is 1600 Nela Avenue, Belle Isle, FL 32809 (the “City”), and City of Belle Isle Charter Schools, Inc., a Florida not-for-profit corporation which operates Cornerstone Charter Academy, a Florida municipal charter school whose mailing address is 5903 Randolph Avenue, Belle Isle, Florida 32809 (“CCA”).

RECITALS:

A. The City owns that certain real property upon which a field commonly known as Wallace Field (the “Property”) is located at E. Wallace Street intersection with Matchett Road which Property has Orange County Tax Parcel Identification # 24-23-29-8977-00-021.

B. The Property is located within the City and is zoned Public Buildings District (PUB) which permits Open Space/ Recreational Facility.

C. CCA desires to utilize the Property as a practice field for CCA’s athletic programs, and to perform certain improvements to the Property, and the City desires to authorize such use and improvements on the terms, conditions, and provisions provided herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.** The foregoing recitals are true and correct, are incorporated herein by this reference, and form a material part of this Agreement.

2. **Construction, Maintenance and Repair**

(a) *Concept, Site Plan and Improvements Approval.* On or before one hundred twenty (120) days after the Effective Date (“Approval Date”), the City and CCA shall consider what concept, site plan and improvements for the Property are acceptable. If the City and CCA, in their respective sole discretions, do not each approve of the same concept, site plan and improvements for the Property on or before the Approval Date, this Agreement terminates on the day after the Approval Date. CCA shall, at its expense, prepare a professionally drawn site plan for the Property which site plan must meet the City’s code requirements and which site plan is subject to initial approval by City Staff. Upon such initial approval, City Staff shall take such actions as the City deems appropriate for seeking approval of the use, including but not limited to preparing the application for site plan approval and acting as the applicant before the City’s Planning and Zoning Board. The City may in its discretion authorize use of the Property by CCA prior to site plan approval, which use shall be subject to the terms, conditions, and provisions of this

Agreement except that the City may terminate such use and this Agreement at any time prior to site plan approval. In the event CCA's proposed site plan is denied by the City, either the City or CCA may terminate this Agreement upon written notice to the other party. If the site plan is approved by the City's Planning and Zoning Board and becomes final without a challenge or appeal, it shall be the "Site Plan" as hereafter referred to in this Agreement.

(b) *Improvements to Property.* On or before _____, CCA shall construct and make all of the improvements on the Property according to the approved Site Plan. The fees, costs, and expenses for the design, permitting, construction and improvements will be the sole responsibility of CCA. Additional construction and improvements may not be performed absent written consent by the City.

(c) *Maintenance by CCA.* CCA, at its cost, shall keep the Property in a neat, clean, and safe condition during and immediately following each event and use of the Property by CCA. After each event and use of the Property by CCA, and before leaving the Property, CCA shall remove any tangible personal property, equipment, waste, temporary signs, and other items associated with CCA's event or use of the Property except where authorized by the City, and CCA, at its cost, shall fully restore the Property to a clean, safe, and orderly condition to the satisfaction of the City in the City's sole discretion. CCA shall promptly repair any damage to the Property arising from the use of the Property by CCA or its agents, employees, attendees, students, etc.

(d) *Maintenance by City.* Except for the responsibilities assigned to CCA under subparagraph 2(c) above, the City shall maintain the appearance and general condition of the Property in a neat and clean manner. Maintenance Costs incurred by the City shall be evenly split between the parties. The City will bill CCA for such costs via itemized invoices, which must be paid within 30 days of receipt by CCA.

(e) *Ownership.* This Agreement grants a license to CCA for the express purposes set forth herein and does not convey any property or equitable interest (including leasehold interest) in the Property to CCA. Any improvements constructed or installed upon the Property with the approval of the City shall be and remain property of the City solely. CCA shall take such additional actions as are necessary in the City's discretion to convey ownership of any improvements that it constructs or installs on the Property to the City. The City reserves all rights of ownership in the Property.

(f) *No Liens.* CCA acknowledges and agrees that the Property is owned by a municipality and therefore is not subject to construction liens pursuant to Chapter 713, Florida Statutes or other liens and encumbrances due to the City's sovereign immunity and constitutionally protected status. CCA shall not permit and shall affirmatively prevent any construction or mechanic's lien and any other lien or encumbrance to be filed or claimed against the Property for any labor, services or materials furnished to the Property, improvements to the Property by CCA or otherwise filed or claimed arising out of or concerning the actions or omissions of CCA or CCA's agents, employees, invitees, contractors, subcontractors, laborers, materialmen, vendors, and licensees.

3. **Use of Property**

(a) *Use Restrictions.* CCA is authorized to conduct practice for its athletic programs, and other uses on the Property as approved by the City in the City's sole discretion. Use of the Property by CCA shall be during daylight hours only. The City shall have priority to use the Property for any purpose in the

City's discretion, and the City shall endeavor but is not required to provide one day's written notice of potential interference with CCA's use of the Property and to coordinate with CCA. The City may close the Property for maintenance, repair or other reasons in the City's discretion and shall provide at least one day's notice of closure of the Property if such closure would interfere with CCA's use of the Property. Further, the City may close the Property for an emergency. CCA has no rights to allow any organization, group, corporation, entity, person or persons, other than CCA's students, coaches, faculty and administrators to use the Property, consistent with this Agreement, as CCA's use rights under this Agreement are only for CCA.

(b) *Non-Exclusive Use.* When the Property is not in use by CCA, the Property shall be available for use by the City, City-approved third party users, the general public, or any other user and for any purpose, all as determined by the City in the City's sole discretion. After any use of the Property by the City or City-approved third-party users, the City shall remove any equipment, waste, signs, and other items associated with the use of the Property that the City does not intend to allow to remain on the Property and shall restore the Property to a clean, safe and orderly condition. The City shall promptly repair any damage to the Property arising from the use of the Property by the City or its approved third-party users.

(c) *Parking and Traffic.* The parties anticipate that CCA's use of the Property will bring additional vehicular traffic to the area. Except for official City vehicles or CCA vehicles necessary to transport equipment to and from the Property or to otherwise maintain the Property, parking shall only be allowed on CCA property, and shall not be allowed on the Property or abutting public right-of-way, absent written permission by the City. Unauthorized vehicles will be cited and/or towed at the owner's expense. Drop-off and pick-up of students at the Property will not be allowed. It is the responsibility of CCA to convey these rules to the students, coaches, faculty, and parents, and for CCA to enforce said rules.

4. **Insurance & Indemnification**

(a) *Insurance.* CCA shall at its sole cost provide liability coverage with the City named as an additional insured in the amount of One Million (\$1,000,000.00) Dollars per occurrence, and Three Million (\$3,000,000.00) Dollars in the aggregate. All insurance shall be obtained from companies authorized to do business in the State of Florida and which have an AM Best rating of at least "A". Within five (5) days of the Effective Date, CCA shall cause the insurance company to provide a certificate of insurance confirming that the City is insured by the insurance company in accordance with the provisions of this Agreement. Further, CCA and the insurance company shall provide the City with a copy of the policy of insurance within thirty (30) days of the Effective Date. Further, the policy and certificate shall provide for not less than thirty (30) days advance notice to the City before cancellation, expiration or alteration of any policy of insurance. CCA agrees to maintain such policy of insurance during the term of this Agreement, and any failure to do so will constitute a breach of this Agreement. Also, the policy will be primary over any other collectible insurance for any liability arising out of claims in connection with this Agreement.

(b) *Indemnification.* CCA hereby indemnifies and agrees to hold harmless the City and its elected and appointed officials, employees, and agents, from and against any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs, and other liabilities, including without limitation litigation costs and attorney's fees for trials and appeals, claimed or asserted by or on behalf of any person arising from any act or omission of CCA or its agents, officers,

employees, contractors, or students related to CCA's use of the Property, but excluding only such matters that are caused by the sole negligence of the City or its officials or employees. This paragraph shall survive termination and expiration of this Agreement.

(c) *Sovereign Immunity.* Nothing contained in this Agreement nor in any instruments executed pursuant to the terms of this Agreement shall be construed as a waiver or attempted waiver by the City or CCA of their respective sovereign immunity protections or of any other privilege, immunity or defense afforded to them or any of their respective officials, employees and agents under the Constitution and laws of the State of Florida.

5. **Term & Breach**

(a) *Duration.* Unless earlier terminated pursuant to the provisions of this Agreement, the term of this Agreement shall be ten (10) years from the Effective Date of this Agreement, and 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 at least ninety (90) days prior to expiration of the current term.

(b) *Termination.* The City may terminate this Agreement prior to the expiration upon ninety (90) days written notice if the City determines in its sole discretion that the Property should be sold or used for some other purpose. CCA may terminate this Agreement upon ninety (90) days written notice to the City, after which termination, CCA shall cease all use of and responsibility for maintenance of the Property. Either party may terminate this Agreement upon breach by the other party if the breaching party fails to cure the breach, or take reasonable steps to cure the breach, within thirty (30) days written notice of the breach to the other party. Provided however, that if the City terminates this Agreement prior to the end of the initial 10-year term and provided the improvements to the Property made by CCA are in good condition, the City shall reimburse CCA the reasonable construction expenses for the physical improvements to the Property approved by the City which expenses were paid by CCA as such are documented to the reasonable satisfaction of the City in improving the Property, on a pro rata basis proportionate to the number of years remaining in the term. Should CCA terminate this Agreement prior to the end of the initial 10-year term and provided the improvements to the Property made by CCA are in good condition, CCA shall forfeit all rights to the improvements and the City shall not reimburse CCA for any improvements. The City and CCA may at any time mutually agree to terminate this Agreement.

(c) *Property Condition.* Upon termination or expiration of this Agreement, CCA shall remove all tangible personal property and equipment, except to the extent the City otherwise allows such to remain, and leave the Property in good, clean, and neat condition, aside from wear and tear due to normal use.

(d) *Default.* The following occurrences or events shall constitute a material default of this Agreement by CCA for which the City may immediately terminate this Agreement upon written notice to CCA: (i) the filing by or against CCA in any court, pursuant to any statute, either of the United States or any state, of a petition in bankruptcy alleging insolvency or seeking reorganization, the appointment of a receiver or trustee, an arrangement under the Bankruptcy Acts, or any similar type of proceeding and the failure of CCA to cause any such filing to be dismissed within a period of 20 days after the date of such filing; (ii) CCA making or proposed making of an assignment for the benefit of creditors; or (iii) CCA abandons use of the Property for a period of six (6) months or more.

6. **General Provisions**

(a) *Attorney Fees.* In the event of any dispute or any lawsuit to enforce the terms of this Agreement, each party shall bear their own attorneys' fees and costs.

(b) *Entire Agreement.* This Agreement constitutes the entire agreement of the parties and supersedes all previous promises, negotiations, representations, and statements with respect to its subject matter. This Agreement may not be modified or amended except by a written instrument equal in dignity herewith and executed by the parties to be bound thereby.

(c) *Non-Waiver.* No consent or waiver, expressed or implied, by either party, to or of any breach or default of the other party, with regard to the performance by said other party of its obligations under this Agreement shall be deemed or construed to constitute consent or waiver, to or of, any other breach or default in the performance of that party, of the same or of any other objection of performance incumbent upon that party. Failure on the part of either party to complain of any act or failure to act on the part of the other party in default, irrespective of how long the failure continues, shall not constitute a waiver by that party of its rights and any remedies that exist under this Agreement, at law, or in equity. Further, nothing herein shall constitute a waiver of the City's home rule or police power authority.

(d) *No Third Party Beneficiaries.* This Agreement is intended solely for the benefit of the parties hereto, and their respective successors in interest and title. No right or cause of action shall accrue under or by reason of this Agreement to or for the benefit of any third party. Nothing contained in this Agreement, whether expressed or implied, is intended, nor shall be construed, to confer upon or give to any person or entity not a party hereto any right, remedy or claim under or by reason of this Agreement or any particular term, provision or condition of this Agreement other than the parties hereto and their respective successors in interest and title.

(e) *Binding Effect & Assignment.* This Agreement shall be binding upon the parties and their respective successors in interest and title. Neither this Agreement nor any of the rights, interests, or obligations under this Agreement shall be assigned by CCA without the prior written consent of the City, in the City's sole discretion.

(f) *Governing Law; Venue.* This Agreement is governed by and construed in accordance with the laws of the State of Florida, and venue for any action arising out of or related to this Agreement shall be in Orange County, Florida.

(g) *Severability.* If any particular term, provision or condition of this Agreement, the deletion of which would not adversely affect the receipt of any of the material benefit of this Agreement by either party hereto or substantially increase the burden of this Agreement upon either party hereto, shall be held to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remaining terms, provisions and conditions of this Agreement.

(h) *Warranties/Representations.* Each party represents that he, she, or it has full authority to execute this Agreement. The City makes no representations or warranties regarding the suitability of the Property for any use to which CCA intends to put or will put the Property. CCA warrants that CCA has full right and authority to engage in the activities that CCA intends to pursue on the Property under this

Agreement. The City in no way warrants or guarantees that CCA will be able to obtain any necessary permit or approval from the City or other governmental agency.

(i) *Time of the Essence.* Time is of the essence for performance of obligations under this Agreement.

(j) *Notice.* Any notices permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, transmitted electronically, or within three (3) days after depositing with the United States Postal Service, postage prepared or by registered or certified mail, return receipt requested, or within one (1) day after depositing with an overnight delivery service, to a party's address as provided in the introductory paragraph of this Agreement.

(k) *Compliance with Laws/Regulations.* CCA shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations. CCA shall be responsible for: (i) securing all appropriate permits and approvals related to the, design, permitting and construction on, and use of, the Property from the City unless and then only except as may be otherwise expressly provided herein; and (ii) for complying with all applicable state and local agencies, concerning CCA's use of the Property and operation thereon under the Agreement.

(l) *No Pledge of Taxation.* In no event shall any obligation of the City under this Agreement be or constitute a general obligation or indebtedness of the City, a pledge of the ad valorem taxing power of the city or a general obligation or indebtedness of the city within the meaning of the Constitution of the State of Florida or any other applicable laws, but shall be performed or paid solely from legally available revenues and appropriated funds.

(m) *Execution, Effective Date & Non-Waiver.* This Agreement may be executed in separate copies by the parties or as part of a single document. Any facsimile or electronic copy of this Agreement, and all signatures thereon, shall be considered for all purposes as an original. This Agreement shall be effective as of the date that it is last executed by the parties and approved by the Belle Isle City Council (the "Effective Date"). By approving and executing this Agreement, the City in no way waives the City's right to contest, and the City does not hereby consent to or agree to the validity of, CCA's bylaws and past or future modification of the CCA bylaws which have diminished or will in any way diminish the City's right to appoint or select CCA board members, and any other actions of CCA which have been or will be inconsistent with the school charters or any provision of law.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the Effective Date.

CITY OF BELLE ISLE
CITY COUNCIL

Mayor Lydia Pisano

ATTEST:

Yolanda Quiceno, City Clerk

Date

CITY OF BELLE ISLE CHARTER SCHOOLS,
INC

Signature

Print Name

Position/Title

Date