



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

**Meeting Date:** August 15, 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 Manager would support the CCA request if CCA entered in to an agreement with the City. The agreement would be drafted similar to the attached agreement (Hood River, Oregon). As part of the agreement, CCA would have to provide certain items such as an engineered site plan for the field as approved by the City, a maintenance commitment for year round, priority of use by the City, and indemnification, as well as other conditions that are outlined in the attached agreement.

**Staff Recommendation:** Direct the City Manager and City Attorney draft an agreement for review by Council and CCA.

**Suggested Motion:** I move that we direct the City Manager and City Attorney to draft an agreement to allow Cornerstone Charter Academy to use the Wallace Field.

**Alternatives:** Do not direct the drafting of an agreement and deny the request of CCA, or allow CCA to use the field without an agreement.

**Fiscal Impact:** None to the City. CCA has offered (prior to this meeting) to make improvements to the field at their expense.

**Attachments:** Copy of sample agreement

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
HOOD RIVER VALLEY PARKS & RECREATION DISTRICT  
AND CITY OF HOOD RIVER  
FOR THE PURPOSE OF  
PROVIDING AND MAINTAINING A DISC GOLF COURSE**

THIS AGREEMENT, made this 14<sup>th</sup> of MARCH, 2005, by and between the Hood River Valley Parks & Recreation District (hereinafter the "District") and the City of Hood River (hereinafter the "City").

**RECITALS**

1. ORS Chapter 190 authorizes governmental entities such as cities and special districts 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. Pursuant to ORS Chapter 266, Oregon parks and recreation districts are empowered to construct, reconstruct, alter, enlarge, operate and maintain parks, recreation grounds and buildings as, in the judgment of the district board, are necessary and proper.

3. The City owns real property commonly known as Morrison Park ("Park") that is zoned Open Space/Public Facility and that is currently not being put to any beneficial use.

4. The District desires to improve the Park for public park purposes and, more specifically, for the purpose of installing and maintaining a Disc Golf Course.

5. The City has agreed to allow the District to use the Park for a Disc Golf Course until such time as the City determines that the Park property should be used for other purposes on the terms and conditions set forth below.

**AGREEMENT:**

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

**Section 1. Disc Golf Construction, Maintenance and Repair.** The City grants the District the exclusive right and privilege to install and operate a Disc Golf Course in the Park, and all associated rights to use the Park for that purpose. The District is responsible for all costs associated with the construction, maintenance, upkeep and repair of the Disc Golf Course.

a. The District shall maintain the appearance and general condition of the Disc Golf Course to the satisfaction of the City.

b. The District shall repair or replace broken, vandalized, dangerous or otherwise unusable equipment as soon as possible.

c. The Disc Golf Course is subject to review and approval under Hood River Municipal Code Section 17.03.080 as a permitted use subject to site plan review. Approval of this Agreement does not constitute approval of the intended use.

d. The District anticipates that it will not need the entire Park for the Disc Golf Course and, therefore, it will not be required to improve those portions of the Park not used for the Disc Golf Course. However, the District will be required to maintain those portions of the Park located south of I-84 and not used for Disc Golf Course in a clean and safe condition, including by not allowing trash to accumulate.

**Section 2. Advertising.** The District may procure and install, affix, maintain and replace appropriate signs displaying advertising matter on the elevated baskets, concrete tee pads, tee/rule signs, or lost disc receptacles.

a. All advertising is subject to the City's approval, both under the HRMC and as to whether the City considers the subject matter of the advertisements appropriate for public property.

b. In the use of advertising, the District may not violate any person's right to privacy or infringe upon any person's trademarks, trade names, copyrights or other proprietary rights. The City's approval of the advertising is not a waiver of those duties and the District shall indemnify and hold the City harmless with respect to all claims arising out of a breach of those duties.

c. All advertising placed by the District on the Disc Golf equipment is owned by the District and remains the property of the District, and is subject to removal by the District at any time.

### **Section 3. Operation.**

a. **Hours and Fees.** The District shall operate the Disc Golf Course as a public park for use by the public at no charge and during the District's regular park hours. The District may close the Disc Golf Course to the public for maintenance (by the City or District), for an emergency, or when the Disc Golf Course is reserved by a private group for exclusive use.

b. **Parking and Traffic.** The parties anticipate that the Disc Golf Course will bring additional vehicular traffic to the area. Consequently, the District shall contact all residents within 250 feet of the Disc Golf Course prior to its opening to discuss any questions or concerns the residents may have. In addition, the District shall make staff available to answer questions and comments that the Disc Golf Course's neighbors may have concerning the operation and maintenance of the Course both before and after it opens. The parties agree that the City may, under this Agreement, impose reasonable parking and traffic restrictions and requirements to address any parking and/or traffic issues that may arise during the term of this Agreement.

**Section 4. Compliance with Laws.** District shall be responsible for compliance with all federal, state and local laws, orders and regulations in connection with its operation of the Disc Golf Course.

**Section 5. Insurance.** The District shall maintain liability insurance for the Park commensurate with the activities conducted there and covering, at a minimum, the parties' liability under state law. The City does not waive any immunity or limitation of liability available to it pursuant to state or federal law, and reserves the right to assert any such immunity and/or limitation.

**Section 6. Indemnification.** The District and City agree that they will each indemnify and hold the other harmless from any and all loss, claim or liability arising from, or related to, the acts or omissions of the parties, their employees and/or agents in connection with the construction, operation and maintenance of the Park.

**Section 7. 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 prior written notice when the City determines that it is necessary and convenient to sell the Park. 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 the notice. This Agreement may otherwise be terminated upon the mutual agreement of the governing bodies of both the District and the City, or, without such agreement, in the event of a material breach of the terms and conditions of this 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 reasonable 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 District shall remove all Disc Golf Course equipment and leave the Park in good condition, wear and tear due to normal use excepted.

**Section 8. 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 9. 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 this 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 this 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 WHEREOF**, the City and the District have executed this agreement pursuant to due authority, as evidenced by the signatures of the duly appointed representatives of each entity below.

**HOOD RIVER VALLEY PARKS &  
RECREATION DISTRICT**

By:   
Its: Board Chair

**CITY OF HOOD RIVER**

By:   
Its: CITY MANAGER