

AN ORDINANCE 2014 - 08 - 14 - 0583

AUTHORIZING A LICENSE AGREEMENT ON CITY PROPERTY WITH HIGGS-CARTER-KING CHARTER SCHOOL FOR A PERIOD OF FIVE YEARS FOR A SCHOOL PARK (SPARK) LOCATED IN COUNCIL DISTRICT 1.

* * * * *

WHEREAS, the City of San Antonio acquired property along the Martinez Creek between West Woodlawn Avenue to south of Cincinnati Avenue through the Federal Emergency Management Association (FEMA) flood buyout program; and

WHEREAS, Higgs-Carter-King (HCK) Charter School approached the City and San Antonio Sports (SAS) about the possibility of a School Park (SPARK) at this location; and

WHEREAS, FEMA requires the property be maintained as open space, which the SPARK program meets this requirement; and

WHEREAS, SPARK site plans have received the necessary approvals and include a soccer field, walking trail, and related amenities; and

WHEREAS, the SPARK program combines public resources to develop public school grounds into neighborhood parks through community engagement with the goal of improving local neighborhoods; and

WHEREAS, in May 2011 SAS expressed an interest in collaborating with the City in order to establish a local SPARK program; and

WHEREAS, SAS provides program oversight and serves as the conduit for the reimbursement of school expenses related to the design, construction, and material expenses associated with the development of the SPARK sites; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee, is authorized to execute a License Agreement on City property with Higgs-Carter-King Charter School for a period of five years for a School Park (SPARK) located in Council District 1. A copy of the license agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP

SW/vv
08/14/14
Item #19

Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 3. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

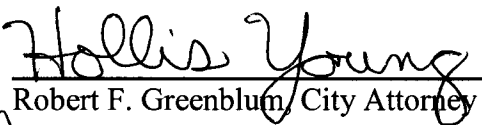
PASSED AND APPROVED this 14th day of August, 2014.


M A Y O R
Ivy R. Taylor

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


for Robert F. Greenblum, City Attorney

Agenda Item:	19
Date:	08/14/2014
Time:	12:06:41 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a License Agreement on City property with Higgs-Carter-King Charter School for a period of five years for a School Park (SPARK) located in Council District 1. [Gloria Hurtado, Assistant City Manager; Xavier D. Urrutia, Director, Parks & Recreation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy Taylor	Mayor		x				
Diego Bernal	District 1		x			x	
Keith Toney	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				x
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Mari Aguirre-Rodriguez	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

**LICENSE AGREEMENT
HIGGS, CARTER, KING CHARTER SCHOOL**

This License Agreement (the "Agreement") is made and entered into as of the _____ day of _____, 201__, by and between the CITY OF SAN ANTONIO, a Texas municipal corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. _____, dated _____, 201__ ("City"), and Higgs, Carter, King Gifted and Talented Charter Academy, a Texas Education Agency Charter School ("School");

1. WITNESSETH:

- 1.1 WHEREAS, in 2001 the City acquired ownership of nine lots along Cincinnati and University Avenues as a result of a federal flood buy-out program; and
- 1.2 WHEREAS, the nine lots are adjacent to the Higgs, Carter, Gifted and Talented Charter Academy located at various addresses along Cincinnati and University Avenues as described in Section 2.1; and
- 1.3 WHEREAS, City and School desire improvements to the lots to allow for public recreational use.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, for and in consideration of the mutual benefits to City and School and the observance of the terms and conditions set forth hereinafter, the parties hereto agree to the following:

2. PREMISES

- 2.1 The Premises shall be defined as follows and as shown on the attached Exhibit A.
 - 642 Cincinnati Avenue, San Antonio TX
 - 646 Cincinnati Avenue, San Antonio TX
 - 650 Cincinnati Avenue, San Antonio TX
 - 535 University Avenue, San Antonio TX
 - 539 University Avenue, San Antonio TX
 - 543 University Avenue, San Antonio TX
 - 547 University Avenue, San Antonio TX
 - 551 University Avenue, San Antonio TX
 - 555 University Avenue, San Antonio TX
- 2.2 School shall have priority use of the Premises for recreational purposes.
- 2.3 At times not in use by School, the Premises shall be open to the general public for park and recreation purposes.
- 2.4 School agrees that its students and any other individuals under its control shall abide by, conform to and comply with all applicable municipal, state and federal laws, ordinances, rules and

regulations and that it will not do or permit to be done anything in violation hereof. If the attention of School is called to any such violation, School or those under its control will immediately desist from and correct such violation.

- 2.5 School acknowledges and agrees that it has been informed that it has obligations to the general public under the terms of the Americans with Disability Act of 1990 as codified In 42 U.S.C. § 12101(a)(1) and (2) and as amended from time to time. School covenants and agrees that it will comply with all the terms and obligations, and, as part of its indemnification of the City, indemnify, hold harmless and defend City from all claims which might arise from School's activities under this Agreement.
- 2.6 School shall not have the right to facilitate the use of or enter into any agreement with another school, sports organization or any other party for the use of the Premises.

3. TERM OF AGREEMENT

- 3.1 The term of this Agreement is five (5) years, beginning on the first day of the month following the completion of the initial improvements ("Commencement Date"), and expiring five years later, if not earlier terminated according to the terms of this Agreement.
- 3.2 Either party shall have the right to terminate this Agreement with sixty (60) days prior written notification to the other party.

4. ACCEPTANCE AND CONDITIONS OF PREMISES

- 4.1 School has had sufficient time and opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. School's taking possession of the Premises shall be conclusive evidence of School's acceptance of the Premises in good satisfactory order in its present condition AS IS, WHERE IS AND WITH ALL FAULTS as suitable for the purpose for which licensed. City specifically disclaims any warranty of suitability for intended purposes of School.
- 4.2 School hereby acknowledges that the City's ownership is subject to the terms of the Stafford Act regulations promulgated thereunder (44 C.F.R. 206.434), as they read now or may be amended in the future, and the requirement of FEMA, which include, among other requirements, the conditions and restrictions outlined below. School further acknowledges that it shall also be subject to the same obligations, restriction and conditions as City.
 - 4.2.1 The Premises shall be used only for purposes compatible with open space, recreational or wetlands management purposes;
 - 4.2.2 No new structures or improvements shall be erected on the Premises other than a restroom or a public facility that is open on all sides and functionally related to the open space use;
 - 4.2.3 No future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided; and
 - 4.2.4 City can only convey the Premises or any interest therein to another public entity and only with prior approval from DEM and the Regional Director of FEMA. Such conveyance shall be made expressly subject to the above-referenced conditions and restrictions which shall run with the Premises in perpetuity.

5. MAINTENANCE

- 5.1 General Maintenance: School shall, at its sole expense, provide all manpower, supplies and materials for the purpose of providing year round maintenance to the Premises in no event less than the quality of maintenance service demonstrated in other City-owned fields and related

amenities. In addition to the other obligations of School, School shall render the following services and perform the following duties with regard to its maintenance of all portions of the Premises, in a faithful, diligent, and efficient manner:

- 5.1.1 Maintain the sports fields at or better than an acceptable standard for play, including watering, mowing, trimming, seeding, leveling, and fertilizing;
 - 5.1.2 Maintain all areas within the Premises other than sports fields, including mowing and trimming in a frequency necessary to maintain the area in an attractive manner. Vegetation must be mowed and trimmed at the fence line.
 - 5.1.3 Trash pickup and removal service in a frequency sufficient to keep the Premises free from litter and debris;
 - 5.1.4 Provide pest control services as frequently as needed;
 - 5.1.5 Keep all areas within the Premises free of graffiti.
 - 5.1.6 Maintain all improvements and structures in good condition, and repair;
 - 5.1.7 Maintain and replace, as needed, the irrigation piping and sprinkler heads within the Premises (if applicable);
 - 5.1.8 Provide such other maintenance tasks and chores as may be required to sustain the Premises in good, clean, well maintained and attractive condition.
- 5.2 School shall promptly repair any damage to the Premises. Notwithstanding any contrary provisions, should the Premises be damaged by fire, tornado or other casualty, City shall be under no obligation to rebuild or repair the Premises.
- 5.3 As the maintenance of the Premises in good condition is the primary consideration of this Agreement, City may elect to make inspections of the Premises to evaluate the effectiveness and consistency of School's maintenance program. Failure to provide the required maintenance, as outlined in this Section, may result in the termination of this Agreement.
- 5.4 No parking is allowed in any area other than the designated parking areas.
- 5.5 School shall use reasonable efforts to recycle materials such as plastic bottles and aluminum cans. School agrees to comply with any recycling programs established and implemented during the term of this Agreement by City for the Park where the Premises are located.
- 5.6 School shall not plant or remove any trees without the prior written approval of City and any approved removals must be in compliance with all applicable laws and ordinances.

6. UTILITIES

- 6.1 School shall pay the cost of electrical service to the Premises.
- 6.2 School shall pay the cost of water and sewer service to the Premises. School must comply at all times with the City's Conservation Ordinance, including year round restrictions, drought restrictions, and charity car wash restrictions. In the event fines or penalties are imposed for non-compliance with the City's Conservation Ordinance or any watering restrictions due to the actions of School, School shall be responsible for the payment of those fines or penalties. School shall coordinate and request through City any irrigation variances of the Conservation Ordinance.

7. IMPROVEMENTS

- 7.1. School may, subject to having first obtained the written approval of the Director, install and/or construct facilities and improvements within the Premises consistent with recreational use. During any period of construction or installation, School, its members, employees, contractors, agents, and School shall ensure that the performance of the construction or installation does not cause or result in damage to City property or adjoining property.

- 7.2. School shall present, for review and written approval, all designs, plans, and specifications to the Director of Parks and Recreation (“Director”) and applicable City boards prior to commencing any construction or installation upon the Premises. All costs for design and construction and related activities shall be borne solely by School. City reserves the right to enter the Premises at any time to inspect construction in progress.
- 7.3. School agrees that it shall obtain at their cost any and all plans approvals, necessary permits, and clearances relative to its improvements from appropriate local, state, and federal regulatory agencies. A copy of all permits or clearances shall be provided to the Director prior to the start of any construction, upon request by City. School covenants that it shall not bind, or attempt to bind, City for payment of any money in connection with any construction authorized hereunder and that it will fully indemnify and hold harmless the City against any and all claims, liens, suits, or actions asserted on account of labor, materials, or services furnished to School during the performance of any said construction and against any claim for injury to person or property.
- 7.4. Improvements made to the Premises shall be owned by the City.

8. DEFAULTS AND TERMINATION RIGHTS

- 8.1 Default by School: It shall be considered an event of Default if School shall fail to keep, observe or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by School and such default shall continue for a period of ten (10) days after notice by City to School, or if such default cannot be cured within ten (10) days, then such additional period as shall be reasonably provided that School has commenced to cure such default.
- 8.2 Remedies of City: Upon the occurrence of an event of default by School as specified in this Agreement, City shall be entitled to terminate this Agreement. After such termination, School shall have no further rights to access the Premises, shall immediately cease all activities thereon and City shall have no further obligation under the terms of this Agreement.
- 8.3 Default by City: City shall be in default under this Agreement if City fails to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by City, and such default shall continue for a period of thirty (30) days after notice thereof by School to City, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonably provided that City has commenced to cure such default.
- 8.4 Remedies of School: Upon the occurrence of an event of default as specified in this Agreement hereof, School shall be entitled to terminate this Agreement and shall have such other rights at law or equity to which it may be entitled.

9. INDEMNIFICATION

- 9.1 School and City acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section 101.001 et seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. School does not waive its immunities, defenses or limits of liability by entering or performing under this Agreement.

10. INSURANCE REQUIREMENTS

- 10.1 Prior to the commencement of any work under this Agreement, School shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City’s Parks and Department, which shall be clearly labeled “**Higgs, Carter, King Charter Academy**” in the

Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Parks and Recreation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

10.3 School's financial integrity is of interest to the City; therefore, subject to School's right to maintain reasonable deductibles in such amounts as are approved by the City, School shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at School's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation*	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Sexual Abuse/Molestation g. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage g. \$100,000
4. Business Automobile Liability* a. Owned/leased vehicles b. Non-owned vehicle c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Property Insurance: For	

physical damage to the property of School	
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*if applicable

- 10.4 School agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of School herein, and provide a certificate of insurance and endorsement that names the School and City as additional insureds. School shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City’s Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City’s Risk Manager, which shall become a part of the contract for all purposes.
- 10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). School shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. School shall pay any costs incurred resulting from said changes.

City of San Antonio
 Attn: Parks and Department – Contract Services Division
 P.O. Box 839966
 San Antonio, Texas 78283-3966

- 10.6 School agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers’ compensation and professional liability policies;
 - Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
 - Workers’ compensation, employers’ liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
 - Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, School shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend School’s performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

- 10.8 In addition to any other remedies the City may have upon School's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order School to stop work hereunder, and/or withhold any payment(s) which become due to School hereunder until School demonstrates compliance with the requirements hereof.
- 10.9 Nothing herein contained shall be construed as limiting in any way the extent to which School may be held responsible for payments of damages to persons or property resulting from School's or its subcontractors' performance of the work covered under this Agreement.
- 10.10 It is agreed that School's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- 10.12 School and any Subcontractors are responsible for all damage to their own equipment and/or property.

11. SIGNS

- 11.1 School hereby agrees not to install or display any sign(s) upon the Premises without the prior written approval to install or display said sign(s) by the City through the Director of the Parks and Recreation Department.

12. ASSIGNMENT

- 12.1 This Agreement is personal to School. It is non-assignable, and any attempt to assign this Agreement will terminate all privileges granted to School.

13. RELATIONSHIP OF PARTIES

- 13.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between parties hereto. It is understood and agreed that no provision contained in this Agreement nor any acts of the parties create a relationship other than the relationship of Licensor and Licensee.

14. CONFLICT OF INTEREST

- 14.1 School acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, material, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15. SEPARABILITY

- 15.1 The parties agree that if any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable under any present or future federal, state, or local law, including, but not limited to, the City Charter, City Code, or City ordinances of the City of San Antonio, Texas, effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

16. NOTICES

- 16.1 Notices to City required or appropriate under this Agreement shall be deemed sufficient if in writing and hand delivered or mailed, registered or certified mail, postage prepaid, addressed to:

City of San Antonio
Parks and Recreation Department
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by City from time to time. Notices to School shall be deemed sufficient if in writing and hand delivered or mailed, registered or certified mail, postage prepaid, addressed to School at:

(add address)

17. TEXAS LAW TO APPLY

- 17.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

18. GENDER

- 18.1 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

19. NON-DISCRIMINATION

- 19.1 School covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, or handicap, in employment practices or in the use of or admission to the Premises, which said discrimination School acknowledges is prohibited.

20. CAPTIONS

- 20.1 The captions contained in this Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Agreement.

21. HOLDING OVER

- 21.1 School shall have no right to hold over after the end of the term of this License Agreement.

22. ENTIRE AGREEMENT/AMENDMENT

- 22.1 This Agreement, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire Agreement between the parties, any other written or parole agreement with City being expressly waived by School.

22.2 No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties.

22.3 It is understood that the Charter of the City requires that all contracts with the City be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

23. AUTHORITY

23.1 The signer of this License Agreement for School hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of School.

IN WITNESS WHEREOF, we have affirmed our signatures this ____ day of _____ 20__.

CITY:

CITY OF SAN ANTONIO, a Texas Municipal Corporation

Sheryl Sculley
Manager

City

ATTEST:

City Clerk

SCHOOL:

**HIGGS, CARTER, KING GIFTED AND
TALENTED CHARTER ACADEMY**

By: Claudia Yarbrough

Title: Superintendent

APPROVED AS TO FORM: _____, City Attorney