

	<b>AGENDA ITEM EXECUTIVE SUMMARY</b>		Agenda Item number: 5a
	Title:	Recommendation to approve a License Agreement with the St. Charles Business Alliance for the Placement of a Removable Mural on the South Wall of the St. Charles Municipal Building.	
	Presenter:	City Administrator, Heather McGuire	
Meeting: Government Operations Committee		Date: April 4, 2022	
Proposed Cost: \$		Budgeted Amount: \$	Not Budgeted: <input type="checkbox"/>
<p><b>Executive Summary</b> <i>(if not budgeted please explain):</i></p> <p>The St. Charles Business Alliance is seeking Council approval to place a 7 ft. x 7 ft. removable mural on the south wall of the municipal building.</p> <div style="text-align: center;">  </div>			
<p><b>Attachments</b> <i>(please list):</i></p> <p>License Agreement, Photo of mural, Photo showing placement</p>			
<p><b>Recommendation/Suggested Action</b> <i>(briefly explain):</i></p> <p>Recommendation to approve a License Agreement with the St. Charles Business Alliance for the Placement of a Removable Mural on the South Wall of the St. Charles Municipal Building.</p>			

## Non-Exclusive License Agreement

This Non-Exclusive License Agreement ("License") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the CITY OF ST. CHARLES, ILLINOIS, an Illinois municipal corporation (herein referred to as "Licensor"), and the ST. CHARLES BUSINESS ALLIANCE, an Illinois not-for-profit company (herein referred to as "Licensee").

Licensor is the owner of the City Hall facilities, located at 2 East Main Street, St. Charles, Illinois ("City Hall").

Licensee desires to install and affix a stick-on wall mural ("Mural") on a portion of the south wall of City Hall, as represented by and within that area depicted on Exhibit "A," attached hereto and made a part hereof (the "Mural Location"); and the Licensor is willing to grant Licensee a license to do so, on the terms and conditions set forth below.

Licensor hereby grants Licensee and its contractors, subcontractors, invitees, employees and agents acting on its behalf, a temporary, non-exclusive license to install and maintain the Mural at the Mural Location, subject to the following terms and conditions:

(1) TERM. Unless otherwise terminated by this License, the term of this License shall begin upon installation of the Mural and remain for a period of two (2) years (the "License Term").

(2) RESTRICTION ON USE. The Licensee shall not alter the Mural or Mural Location in any fashion without the written consent of the Licensor. Licensee shall, upon termination of this License, immediately remove the Mural and deliver up the Mural Location to the Licensor peaceably, quietly, and in as good order and condition as the same now are, normal wear and tear excepted. Licensee shall comply with all applicable federal, state, county and local laws, regulations and ordinances, as may be applicable to the Mural and Mural Location.

(3) CONDITION; MAINTENANCE; REPAIR; UTILITIES. Licensee accepts the Mural Location in its current condition, and Licensor makes no representations concerning the condition of the Mural Location. Licensor has no duty or obligation to maintain or repair the Mural Location during the License Term. Any preparation, maintenance, repairs or alterations made to the Mural Location by the Licensee shall be made at the sole expense of the Licensee, and the Licensee shall have no right to recover any such amounts from the Licensor. Further, Licensor shall not be liable to Licensee for any damage or injury to any of them or the Mural occasioned by the failure of the Licensor to keep the Mural Location maintained and in repair.

(4) ASSUMPTION OF RISK. Licensee shall use the Mural Location at its own risk; and Licensor shall not be liable for any damage to person or property resulting, directly or indirectly, from Licensee's use of the Mural Location; unless such damage is caused by Licensor's negligence or willful misconduct. Licensee acknowledges and agrees that the Licensor shall not be liable for any loss, theft of or damage to the Mural.

(5) INDEMNIFICATION. Licensee shall indemnify and save harmless Licensor and its officials, officers, employees, staff, contractors, agents, representatives, consultants, successors and assigns (collectively, the "Indemnitees"), from and against any and all losses, verifiable and substantiated damages, third-party claims, actions, liabilities, reasonable actual out-of-pocket costs and expenses including, without limitation, reasonable outside attorneys' fees and expenses that the Indemnitees may suffer, incur or sustain arising out of or relating to the activities of Licensee, or any invitees thereof, under this License, or any acts or omissions of Licensee or its contractors, subcontractors, agents, employees, tenants, invitees or representatives hereunder, or with respect to or arising out of any use of the Mural Location or the rights herein granted, or the performance or non-performance of Licensee's obligations hereunder. The Licensee, in carrying out its obligations hereunder, shall use legal counsel reasonably acceptable to the Licensor. The indemnity required herein shall not be limited by reason of the specification of any particular insurance coverage. The provisions of this Section 5 shall survive the termination of this License.

(6) INSURANCE. Not less than ten (10) days prior to commencing operations under this License, Licensee shall, at its sole cost, acquire and maintain throughout the License the following insurance coverage.

- a. Property insurance for covering damages that may be caused by the installation, maintenance, repair or removal of the Mural at the Mural Location;
- b. Workers' compensation insurance, as required by law; and
- c. Commercial general liability insurance with respect to its activities pursuant to this License.

Acceptance by the Licensor of insurance submitted by the Licensee does not relieve or decrease in any manner the liability of the Licensee for performance of the obligations required under this License. The Licensee is responsible for any losses, claims, and costs of any kind that Licensee's insurance does not cover.

The Licensee shall furnish, or cause its contractors to furnish, to the Licensor, a certificate of insurance evidencing coverages and limits otherwise reasonably satisfactory to the Licensor pursuant to Licensor's requirements. The insurance policy shall be expressly endorsed to include the Licensor as additional insured. Such insurance shall be maintained during the License Term.

With the exception of Workers' Compensation insurance, the Licensor and its elected officials, officers, employees and agents shall be included as an additional insured under the insurance policies required herein. Coverage afforded the Licensor under these policies shall be primary insurance. If the Licensor has other insurance which is applicable to the loss, such other insurance shall be on an excess and/or contingent basis.

(7) REMOVAL. At all relevant times during this License, if the Licensor determines that the Mural is causing damage to the Mural Location or supporting structure and/or represents a hazard

to public health and safety or a nuisance, then in its sole discretion, the Licensor may require the removal of the Mural at any time. If the Licensee fails to remove the Mural, then the Licensor may remove the Mural, without compensation or reimbursement to the Licensee.

(8) ASSIGNMENT AND SUB-LICENSING. Licensee shall not assign this License or any part hereof in any manner whatsoever nor shall it assign any of the privileges herein granted without the prior written consent of the Licensor, which consent may be withheld, conditioned or delayed in its sole and absolute discretion. The Licensee shall not sublicense or otherwise provide any successor or operational rights to the Mural Location or any portion thereof, or any privileges granted herein, without the prior written consent of the Licensor, which may be withheld, conditioned or delayed in its sole discretion.

(9) FINANCIAL RESPONSIBILITY/NO THIRD-PARTY BENEFICIARIES. Licensor shall have no financial responsibility or obligation to Licensee or any third party as a result of Licensor's granting the privileges described herein to Licensee. This License creates no rights, title or interest in any person or entity whatsoever (whether under a third party beneficiary theory or otherwise) other than the Licensee and the Licensor.

(10) NO LEASE OR EASEMENT. Licensee expressly acknowledges that nothing herein is intended to create a corporal or possessory interest of Licensee and, accordingly, this License shall not be construed as a lease, easement or any other interest running with the land. Neither this License nor any summary or memorandum thereof shall be recorded with any public authority.

(11) RELATIONSHIP OF THE PARTIES. Under no circumstances shall this License be construed to create a relationship of agency, partnership, joint venture, or employment between the Licensor and the Licensee.

(12) WASTE. In the exercise of the privileges herein granted, Licensee will conduct all of its operations in a careful and proper manner, and will not commit any waste or damage or permit any nuisance upon, around or at the City Hall or the Mural Location.

(13) REPRESENTATIONS AND WARRANTIES REGARDING COPYRIGHT. Licensee warrants that it has all right, title and ownership interest in the Mural, and that the Mural is not subject to any ownership, lien, encumbrance, copyright infringement or other claim by any other person or entity. Licensee agrees that it shall not take any action to limit or affect this warranty during the term of this License unless it obtains the advance written agreement of the Licensor.

(14) REVOCATION. In the event of any violation by Licensee of the terms of this License and upon five (5) business days prior written notice to Licensee by Licensor, except in the case of an emergency for immediate revocation, this License and any rights granted herein may be revoked by the Licensor.

(15) AUTHORITY. Each party warrants to the others that it is authorized to execute, deliver and perform this License. Each party warrants to the others that execution, delivery and performance

of this License do not constitute a breach or violation of any agreement, undertaking, law or ordinance by which that party is bound. Each individual signing this License on behalf of a party warrants to the others that such individual is authorized to execute this License in the name of the party on whose behalf he or she executes it.

(16) **EARLY TERMINATION.** Should Licensee elect at any time to terminate this Agreement earlier than the expiration of the Term (which Licensee shall have the right to do), written notice thereof will be given by Licensee to Licensor thirty (30) days in advance of such termination. Licensee shall remain obligated to restore the Mural Location as provided hereunder.

(17) **REMEDIES.** Licensor shall have any and all remedies for breach of this Agreement by Licensee, including but not limited to a claim for damages and equitable relief.

(18) **MISCELLANEOUS.**

(a) **No Liens.** Licensee shall pay for all labor done or materials furnished in the installation, repair, replacement, or maintenance of the Mural on the Mural Location by Licensee, and shall keep the Mural Location free and clear of any lien or encumbrance of any kind whatsoever created by Licensee's act or omission.

(b) **Waivers.** No waiver of default by the Licensor or any of the terms, covenants or conditions hereof to be performed, kept and observed by Licensee shall be construed or operate as a waiver by the Licensor of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by Licensee.

(c) **Waiver of Claims.** Licensee hereby waives any claim against the Licensor, and its elected officials, officers, agents and employees, that it may have on the date of execution of this License for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this License or any part thereof, or by any judgment or award in any suit or proceeding declaring this License null, void and voidable, or delaying the same or any part hereof from being carried out.

(d) **Attorney's Fees.** In the event that the Licensor brings and prevails in any action, suit or proceeding to take possession of the Mural Location or to ensure compliance with this License, Licensee shall pay the Licensor's reasonable outside attorney's fees, in an amount allowed by the court in said action, suit or proceeding.

(e) **No Third Party Beneficiary.** This License is made for the benefit of the parties hereto and nothing herein shall be construed to create any right or benefit enforceable by any third party.

(f) **Survival of Certain Provisions.** Licensee shall remain obligated to the Licensor under all clauses of this License that expressly or by their nature extend beyond and survive the termination of this License, including the indemnity provisions hereof.

(g) Severability. In the event any term, covenant or condition herein shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein, provided that such invalidity does not materially prejudice either the Licensee or the Licensee in their respective rights and obligations contained in the valid terms, covenants or conditions hereof.

(h) Written Amendment. Unless otherwise provided herein, this License may be amended only by a written instrument duly executed by the parties.

(i) Time of Essence. Time is expressed to be of the essence in this License.

(j) Force Majeure. Timely performance by both parties is essential to this License. However, neither party is liable to the other for damages resulting from delays or other failures to perform its obligations under this License to the extent the delay or failure is caused by Force Majeure. For purposes of this License, "*Force Majeure*" shall mean pandemics, epidemics, fires, floods, explosions and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.

(k) Notices. All notices provided for herein shall be in writing and served or given by electronic delivery, with confirmation of receipt, hand delivery, or an overnight delivery service. Any notice permitted or required to be served upon Licensee may be served upon it at:

St. Charles Business Alliance  
Attn: Executive Director

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Any notice permitted or required to be served upon the Licensor may be served upon it at:

City of St. Charles  
Attn: City Administrator  
2 East Main Street  
St. Charles, Illinois 60174  
E-Mail: [hmcguire@stcharlesil.gov](mailto:hmcguire@stcharlesil.gov)

Either party may give notice in writing to the other party of any change in such address, and, in such event, notices shall then be given to the party's substituted address.

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(k) Venue. This License is subject to and shall be interpreted under the laws of the State of Illinois. Court jurisdiction shall exclusively be in the Circuit Court of Kane County, Illinois. Licensee shall ensure that Licensee and its employees, agents and officers are familiar with and comply with all applicable federal, state and local laws, regulations and ordinances as now written or hereafter amended or promulgated.

**LICENSOR**

CITY OF ST. CHARLES, an Illinois municipal corporation

By: \_\_\_\_\_  
Lora A. Vitek, Mayor

Attest: \_\_\_\_\_  
Nancy Garrison, City Clerk

**LICENSEE**

ST. CHARLES BUSINESS ALLIANCE, an Illinois not-for-profit company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF KANE            )

Before me, the undersigned, a Notary Public in and for said county and state, on this \_\_\_\_ day of \_\_\_\_\_, 2022, personally appeared Lora A. Vitek and Nancy Garrison, to me known to be the Mayor and City Clerk, respectively, of the City of St. Charles, an Illinois municipal corporation, who executed the foregoing License Agreement and acknowledged to me that they executed the same as their free and voluntary act and deed and as the free and voluntary act of the City of St. Charles, for the uses and purposes therein set forth.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_        )  
  ) SS  
COUNTY OF \_\_\_\_\_        )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public in and for said State, personally appeared, \_\_\_\_\_, to me personally known as the \_\_\_\_\_ of St. Charles Business Alliance, who being by me duly sworn did say that he/she executed the said instrument as his/her voluntary act and deed for the purposes set forth herein.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**MURAL AND MURAL LOCATION**



7 ft. x 7 ft. removable mural



7 ft. x 7 ft. removable mural  
Placement on Building