



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item Number: IC

Title:

Recommendation to Approve a Licensing Agreement with Airboat Productions, LLC for Use of the City’s West Side Parking Deck, located generally at Illinois Street and First Street, St. Charles.

Presenter:

Police Chief James Keegan

Meeting: City Council

Date: January 18, 2022

Proposed Cost: \$

Budgeted Amount: \$

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

Pursuant to the direction of Legal Counsel at the January 3, 2022 Government Operations meeting, an agreement has been drafted for use of the west side parking deck located at Illinois Street and First Street, by Airboat Productions, LLC during their upcoming filming schedule in March 2022.

Attachments *(please list):*

Licensing Agreement; photo of property

Recommendation/Suggested Action *(briefly explain):*

Recommendation to Approve a Licensing Agreement with Airboat Productions, LLC for Use of the City’s West Side Parking Deck, located generally at Illinois Street and First Street, St. Charles.

License Agreement

This 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 AIRBOAT PRODUCTIONS, LLC, a _____ limited liability company (herein referred to as "Licensee").

Licensee desires to enter onto the fifth floor of the City's West Side Parking Deck, located generally at Illinois Street and First Street, St. Charles, Illinois and within that area depicted on Exhibit "A," attached hereto and made a part hereof (the "Property") for a movie production and related activities (the "Event"); 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 license to enter on the Property for the purposes of utilizing the Property for the Event, subject to the following terms and conditions:

(1) TERM. The term of this License shall begin on _____, 2022 and end on _____, 2022 (the "License Term").

(2) RESTRICTION ON USE. Licensee shall only use the Property for the purposes of the Event. The Licensee shall not alter the Property in any fashion without the written consent of the Licensor. Licensee shall, upon termination of this License, immediately cease use of and quit and deliver up the Property to the Licensor peaceably, quietly, and in as good order and condition as the same now are, normal wear and tear excepted.

Licensee shall not carry on, upon the Property or any part thereof, or knowingly permit to be carried on, any trade, business or use of an unsafe or unhealthful nature, or which shall constitute a nuisance. Licensee shall comply with all applicable federal, state, county and local laws, regulations and ordinances, as may be applicable to the Event. Licensee shall comply with the applicable and known requirements of the City of St. Charles Police and Fire Departments in producing the Event and shall confer with said departments to ensure safety and compliance with all City of St. Charles Ordinances. **The event is contingent upon CDC and State of Illinois guidance as related to the threat of COVID-19. Strict compliance with all CDC and State of Illinois guidance will be observed by Licensee at the Event.**

(3) CONDITION; MAINTENANCE; REPAIR; UTILITIES. Licensee accepts the Property in its current condition, and Licensor makes no representations concerning the condition of the Property. Licensor has no duty or obligation to maintain or repair the Property during the License Term. Any maintenance, repairs or alterations made to the Property 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 their property occasioned by the failure of the Licensor to keep the Property maintained and in repair; unless such damage or injury is a result of Licensor's negligence or willful misconduct. Except as approved by the Licensor, Licensee shall not attach, affix or exhibit, or permit to be attached, affixed or exhibited any articles of permanent or semi-permanent character or any sign, attached or

detached, with any writing, printing of symbols thereof, on or about the Property, or upon any appurtenances thereto. The Licensee shall be responsible for and pay for any and all utilities required and utilized during the term of the License.

(4) ASSUMPTION OF RISK. Licensee shall use the Property 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 Property; unless such damage is caused by Licensor's negligence or willful misconduct.

(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 Property 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 insurance coverage required herein. 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 shall increase such minimum limits upon receiving notice in writing from the Licensor. 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) HAZARDOUS WASTE, SUBSTANCES, MATERIALS, EXPLOSIVES. Licensee shall not store, house, possess or permit any hazardous waste, hazardous substances, hazardous materials, or explosives, upon the Property, or any part thereof.

(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 Property 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) **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, this License and any rights granted herein may be revoked by the Licensor.

(10) **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.

(11) **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 Property as provided hereunder and Licensor shall only be entitled to receive as full compensation for Licensee's use a pro-rated amount of the negotiated fee for each day during which Licensee used the Property during such thirty (30) day period.

(12) **REMEDIES.** Licensor's sole remedy for breach of this Agreement by Licensee shall be an action at law for compensatory money damages (but not punitive or consequential). Licensor agrees not to seek, nor shall Licensor be entitled to, injunctive or other equitable relief. Licensor shall not be entitled to enjoin, restrain or otherwise impair Licensee's development, production, exhibition, advertising, promotion or other exploitation of the Event, or any other rights of Licensee hereunder.

(13) **MISCELLANEOUS.**

(a) **No Liens.** Licensee shall pay for all labor done or materials furnished in the repair, replacement, development or improvement of the Property by Licensee, and shall keep the Property 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 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. Notwithstanding the foregoing, Licensor can be held liable for any claim that arises as a result of Licensor's negligence or willful misconduct.

(d) Attorney's Fees. In the event that the Licensor brings and prevails in any action, suit or proceeding to take possession of the Property 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 Licensor 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:

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

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.

(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

AIRBOAT PRODUCTIONS, LLC, a _____ limited liability 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 _____)

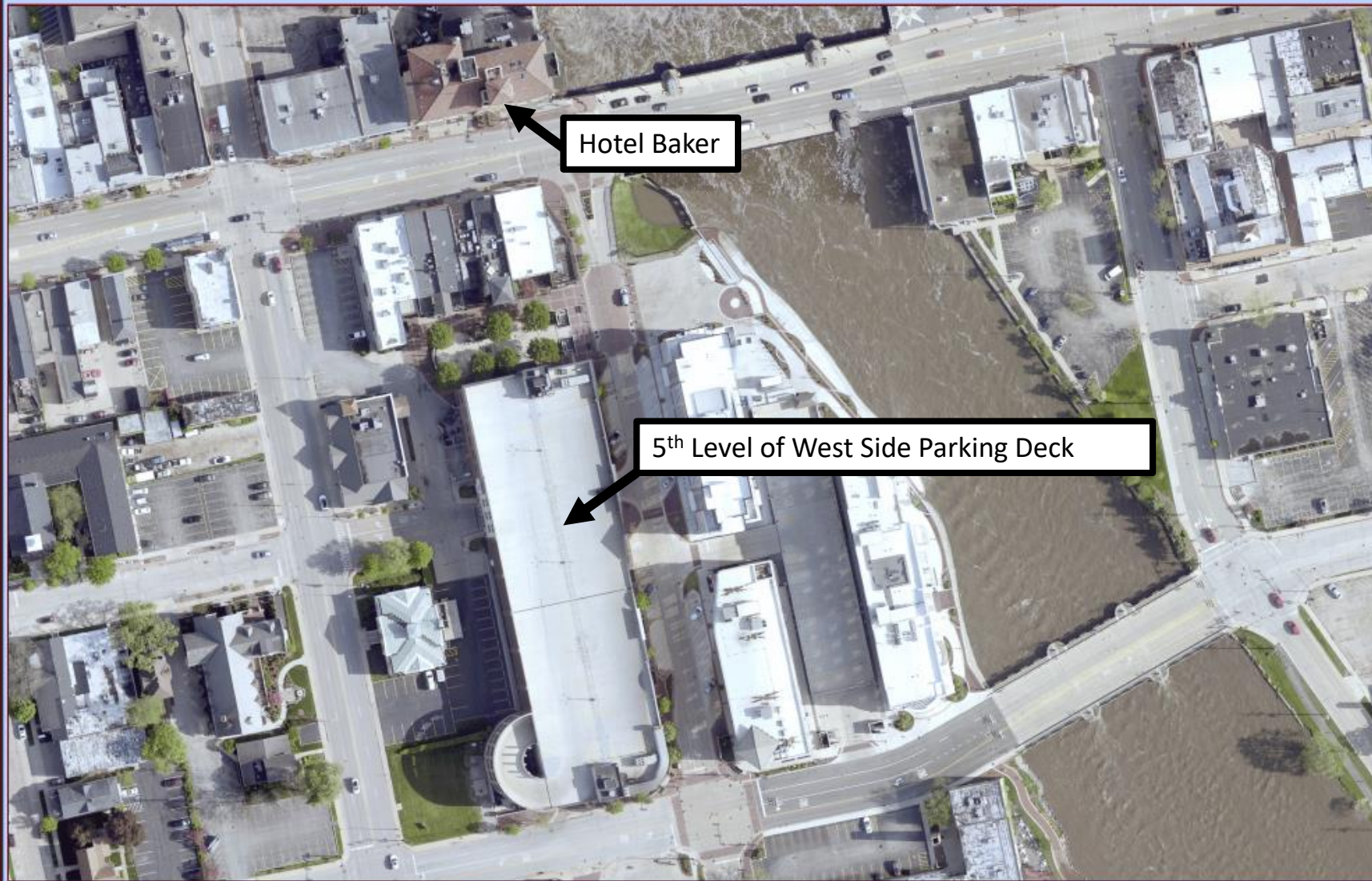
On this ____ day of _____, 2022, before me, a Notary Public in and for said State, personally appeared, _____, to me personally known as the _____ of Airboat Productions, LLC, who being by me duly sworn did say that he/she executed the said instrument as his/her voluntary act and deed for the purposes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

Notary Public

My Commission Expires: _____

EXHIBIT A

LICENSE PROPERTY



Site Name:
City of St. Charles, Illinois
Kane County, Illinois
Madison County, Illinois
Project: 5th Level West Side Parking Deck
Coordinate System: Illinois State Plane East
North American Datum 1983
Printed on: January 23, 2022 10:17 AM



0 60 120 Feet

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Prepared by Precision GIS