

 <p>CITY OF ST. CHARLES ILLINOIS • 1834</p>	<b>AGENDA ITEM EXECUTIVE SUMMARY</b>		Agenda Item number: IIE
	Title:	<b>Recommendation to approve a Resolution to Execute a License Agreement with the St. Charles Park District for the use of Langum Park for the Fireworks Event on July 4, 2023.</b>	
	Presenter:	<b>Fire Chief Scott Swanson</b>	
<b>Meeting:</b> City Council		<b>Date:</b> June 19, 2023	
<b>Proposed Cost:</b> \$		<b>Budgeted Amount:</b> \$	<b>Not Budgeted:</b> <input type="checkbox"/>
<b>TIF District:</b> None			
<b>Executive Summary</b> (if not budgeted, please explain):			
<p>The St. Charles Park District has requested the use of Langum Park for an electronically fired fireworks and pyrotechnics display on July 4, 2023, to begin at dusk. The Park District has hired Mad Bomber (Planet Productions) to conduct this event and will coordinate with the Park District as their licensed contractor. Mad Bomber will provide certified and experienced technicians to handle, transport, set up, fire, and remove all equipment. The City of St. Charles and the St. Charles Park District will enter into an agreement for the use of Langum Park for the fireworks display taking place on July 4, 2023, because this is City-owned property.</p>			
<b>Attachments</b> (please list):			
License Agreement			
<b>Recommendation/Suggested Action</b> (briefly explain):			
Recommendation to approve a Resolution to Execute a License Agreement with the St. Charles Park District for the use of Langum Park for the Fireworks Event on July 4, 2023.			

**City of St. Charles, Illinois  
Resolution No. \_\_\_\_\_**

**A Resolution Authorizing the Mayor and City Clerk of the City of St. Charles to  
Execute a License Agreement for the use of Langum Park for an Electronically  
Fired Fireworks and Pyrotechnics Display on July 4, 2023.**

**Presented & Passed by the  
City Council on June 19, 2023**

BE IT RESOLVED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk be and the same are hereby authorized to execute certain Agreements, in substantially the form attached hereto and incorporated herein as Exhibit “A”, by and on behalf of the City of St. Charles.

**Presented** to the City Council of the City of St. Charles, Illinois this 19<sup>th</sup> day of June, 2023.

**Passed** by the City Council of the City of St. Charles, Illinois this 19th day of June, 2023.

**Approved** by the Mayor of the City of St. Charles, Illinois this 19th day of June, 2023.

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

ATTEST: \_\_\_\_\_

City Clerk

COUNCIL VOTE:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Abstain: \_\_\_\_\_

Absent: \_\_\_\_\_

# EXHIBIT A

## License Agreement

This License Agreement ("*License*") is made and entered into this \_\_\_\_ day of June, 2023, by and between the CITY OF ST. CHARLES, ILLINOIS, an Illinois municipal corporation (herein referred to as "*Licensor*"), and the Board of Commissioners of St. Charles Park District (herein referred to as "*Licensee*").

Licensee desires to enter onto the property commonly known as Langum Park, St. Charles, Illinois and within that area depicted on Exhibit A, attached hereto and made a part hereof (the "*Property*") for the purpose of Licensee's contractor conducting an electronically fired fireworks and pyrotechnics display in accordance with the agreement that is attached hereto as Exhibit C, on July 4, 2023, beginning at Dusk (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) LICENSEE CONTRACTOR. Licensee represents and warrants to Licensor that it has hired Mad Bomber (Planet Productions) ("*Contractor*") to provide the fireworks for this Event. Contractor shall coordinate with the Licensor in performance of the Event.

On behalf of Licensee:

Contractor shall provide electronically fired fireworks and pyrotechnics displays pursuant to the shell parameters outlined in Exhibit B, attached hereto and made a part hereof. Contractor shall provide experienced and qualified technicians to set up, fire and remove all equipment. The pyrotechnicians shall be certified and experienced in major fireworks shows and, in the handling, transporting and discharge of fireworks. At all times, Contractor shall comply with all applicable City, County and State codes and regulations governing fireworks and pyrotechnical displays, including but not limited to:

- A. NFPA 1123;
- B. International Fire Code Section 3308;
- C. All pyrotechnic assistants must be registered with the State Fire Marshal's Office;
- D. Pyrotechnic Distributor and Operator Licensing Act.

Contractor shall provide an on-site inventory check of shells to the Licensor, upon request. All fireworks and pyrotechnics packages shall be clearly labeled as to size, type, quantity and country of origin.

On or before the Event, (i) Contractor shall insure to the Licensor that all applicable (federal, state and local) permits are current and in good standing and will remain current and in good standing through the date of the Event, (ii) Contractor shall provide the Licensor with a copy of all applicable

permits, and (iii) Contractor shall provide the Licensor with a certificate of good standing for Contractor from the Illinois Secretary of State, indicating Contractor is authorized to do business in the State of Illinois.

Contractor and Licensee shall provide the Licensor's officials, employees and Police and Fire Departments complete access to its operations on the date of the Event. Contractor shall provide the Licensor written procedures outlining safety and operational plans for delivery, set-up and discharge of fireworks and pyrotechnics displays, and responses to variable weather.

Contractor and Licensee shall provide site clean-up, including removing all firing materials, debris, packing materials, and filling holes utilized for firing of displays. Contractor shall inspect the fallout zone at the end of the Event and at first dawn after the Event. Contractor shall be responsible for the recovery and removal of any unfired materials. Any shell that failed to explode shall be disposed of in accordance with all applicable laws and regulations.

(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 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 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 and State of Illinois regulations.

(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. In all events, Licensee shall be responsible and liable for the actions of its employees, guests, agents and the Contractor and its employees.

(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, Contractor or any guests, employees, agents, and invitees thereof, under this License, or any acts or omissions of Licensee or its Contractor, 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 or Contractor'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 no cost to Licensor, acquire and maintain throughout the License the insurance coverage satisfactory to the Licensor, pursuant to Licensor's requirements. 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.

In addition, the Licensee shall cause its Contractor to furnish to Licensor a certificate of insurance evidencing coverages and limits otherwise reasonably satisfactory to the Licensor, pursuant to Licensor's requirements. 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) **REVOCAION.** 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) **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.

(12) **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 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 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:

St. Charles Park District  
Attn: Superintendent of Recreation  
8 North Avenue  
St. Charles, IL 60174  
Email: mkies@stcparks.org

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.

(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**

BOARD OF COMMISSIONERS OF ST. CHARLES PARK DISTRICT

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 \_\_\_\_\_, 2023, 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 \_\_\_\_\_, 2023, before me, a Notary Public in and for said State, personally appeared, \_\_\_\_\_, to me personally known as the \_\_\_\_\_ of \_\_\_\_\_, 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:\_\_\_\_\_