



ST. CHARLES
SINCE 1834

AGENDA ITEM EXECUTIVE SUMMARY

Title: Recommendation to Approve Agreement With the Hotel Baker.

Presenter: Chief Mullen

Please check appropriate box:

<input checked="" type="checkbox"/>	Government Operations (11/7/11)	<input type="checkbox"/>	Government Services
<input type="checkbox"/>	Planning & Development	<input type="checkbox"/>	City Council
<input type="checkbox"/>	Public Hearing	<input type="checkbox"/>	

Estimated Cost:	\$10,500	Budgeted:	YES	<input checked="" type="checkbox"/>	NO	<input type="checkbox"/>
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If NO, please explain how item will be funded:

Executive Summary:

The Fire Department has identified a need to install anchor plates in the river wall south of the dam on the Fox River, in order to facilitate potential rescue or recovery efforts along the face of the low head dam. During the City's renovation of the riverwall in 2010, the Fire Department facilitated the installation of four anchor plates in the wall on the east side of the river. To bring this project to a conclusion, the Fire Department proposes to install three additional anchors in the riverwall of the Hotel Baker along the west side of the river. Hotel management is in agreement with this proposal. The City will retain Bulley and Andrews, the same firm that completed the riverwall project for the City, to install this equipment. The attached agreement identifies the Hotel's consent for the equipment installation, terms of access, responsibilities for maintenance, and indemnification and hold harmless conditions.

Attachments: (please list)

Agreement with Hotel Baker and City of St. Charles

Recommendation / Suggested Action (briefly explain):

Recommend approval of a Resolution Authorizing the Mayor and City Clerk to Execute an agreement by and between Hotel Baker and the City of St. Charles.

For office use only: Agenda Item Number: 7a

City of St. Charles, IL
Resolution No. _____

A Resolution Authorizing the Mayor and City Clerk of the City of St. Charles
To Execute an Agreement – JDB Investment Group LLC
(Hotel Baker)

Presented and Passed by the
City Council on _____

BE IT RESOLVED by the CITY COUNCIL OF THE CITY OF ST. CHARLES, KANE AND DU PAGE COUNTIES, ILLINOIS, that the MAYOR and CITY CLERK be hereby authorized to execute that Agreement, 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 ____ day of _____, 2011.

Passed by the City Council of the City of St. Charles, Illinois this ____ day of _____ 2011.

Approved by the Mayor of the City of St. Charles, Illinois this ____ day of _____, 2011.

Mayor Donald P. DeWitte

Attest:

City Clerk

Council Vote:

Ayes: _____

Nays: _____

Abstain: _____

Absent: _____

Intergovernmental Agreement between the City of St. Charles and the Hotel Baker

This Agreement (the "Agreement") is made and entered into this ---- day of -----, 2011, by and between the City of St. Charles (the "City"), a Illinois municipal corporation organized and existing under the laws of the State of Illinois, in the exercise of its home rule powers, and the JDB Investment Group LLC (the "Hotel"); hereinafter sometime individually referred to as a "Party" or collectively as the "Parties";

WITNESSITH:

WHEREAS, the Hotel is located 100 W. Main Street, St. Charles, IL on the west bank of the Fox River (the "River") within the corporate limits of the City; and

WHEREAS, the City is desirous of implementing safety measures to assist the City's fire department personnel in rendering aid, assistance and rescue services to persons in need of such services by virtue of their presence in and upon said River; and

WHEREAS, the Hotel owns and maintains a concrete river wall (the "River Wall") abutting the west bank of the River; and

WHEREAS, in furtherance of its desire to provide aid, assistance and rescue services to persons in and upon the River, the City is desirous of placing and installing three (3) stainless steel anchors (the "Anchors") in the River Wall to facilitate such services and the Hotel is willing to permit the City to install and maintain the Anchors all upon the terms and conditions contained in this Agreement; and

WHEREAS, Section 10 of Article VII of the 1970 Constitution of the State of Illinois (the "Illinois Constitution") provides, *inter alia*, that "Units of local government and school districts may contract or otherwise associate with individuals associations, and corporations in any manner not prohibited by law or by ordinance," and

WHEREAS, the City and the Hotel desire to enter into this Agreement upon the terms and conditions set forth therein.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION ONE - Recitals: The foregoing recitals are hereby incorporated into the body of this Agreement as substantive provisions thereof.

SECTION TWO – City Authorization: Subject to the City receiving the approval of the Hotel as hereinafter provided in Section Three of this Agreement, the City shall have access to the River Wall to install and otherwise deal with the installation of the Anchors on and in the River Wall and shall, in addition, have access to the River Wall as may be reasonably necessary to facilitate installation of the Anchors by the City. .

SECTION THREE – Conditions of Access: The access provided for in Section Two of this Agreement shall be subject to the following conditions:

- a. The Anchors shall be located as depicted upon the drawing attached hereto and incorporated herein as Exhibit “A”
- b. The Anchors shall be substantially similar to samples of anchors heretofore provided to, and approved by, the Hotel.
- c. The installation of the Anchors shall be performed in a safe and workmanlike manner so as to minimize, to the extent reasonably possible, any damage to the River Wall.
- d. The City shall be responsible to secure any and all permits necessary to install the Anchors, including but not limited to permits as may be required by the DNR, the State of Illinois, the County of Kane, or the City of St. Charles.
- e. The City shall immediately repair any damage to the River Wall caused by the installation of the Anchors..
- f. The City discloses to the Hotel the name and contact information for any contractor who will have access pursuant to this agreement to facilitate installation of the Anchors.
- g. Any contractor who will have access pursuant to this agreement to facilitate installation of the Anchors will, prior to being allowed access to the River Wall, provide the Hotel with a Certificate Of Insurance with a minimum liability coverage of \$5,000,000.00 for personal injury and \$1,000,000.00 for property damage.
- h. Work on the River Wall will be scheduled with prior notice to and the consent of the Hotel, which consent shall not be unreasonably withheld.

- i. The City will make every effort to ensure that the work necessary to install the Anchors does not interfere with the operations of the Hotel.

SECTION FOUR – Post-Installation Responsibility: From and after the installation of the Anchors, it shall be the ongoing responsibility of the City to inspect and maintain the Anchors and the areas of the River Wall within which the Anchors are secured so as to assure that the Anchors will continue to function as intended and that the areas of the River Wall wherein the Anchors have been installed are properly maintained. The City shall be responsible for uncorrected damage to the River Wall resulting from the installation and/or maintenance of the Anchors in the River Wall. Access to the River Wall to conduct post installation inspections or repairs of the Anchors will be subject to the same conditions set forth in Section Three and the indemnification provisions in Section Five..

SECTION FIVE – Indemnification: The City agrees to indemnify, defend and hold harmless the Hotel, and its respective officers, agents and employees, from and against any losses, costs, damages, liabilities, claims, suits, liens, actions, causes of action and expenses (including without limitation, attorney's fees and court costs) arising out of the City's installation, maintenance, repair, removal, replacement and other activity related to the Anchors to be installed on and in the River Wall under this Agreement. Further, the City's indemnification extends to any mechanics' lien claim filed by any contractor, subcontractor or materialman performing work or supplying materials in connection with the installation of the Anchors in the Hotel's River Wall.

SECTION SIX – Insurance: Prior to the commencement of work on the installation of the Anchors, the City shall provide, or cause its contractors or subcontractors to provide, the Hotel with evidence of all policies of insurance which the Hotel may reasonably require in forms and coverages, issued by companies and in amounts reasonably satisfactory to the Hotel, including without limitation, comprehensive liability, workmen's compensation and builder's risk insurance coverage.

All such contractors or subcontractors shall furnish, or cause to be furnished, to the City and the Hotel duplicate originals, if requested, or appropriate certificates of insurance evidencing

that there shall be in effect comprehensive bodily injury and property damage liability insurance with a minimum liability coverage of \$5,000,000.00 for personal injury and \$1,000,000.00 for property damage.

SECTION SEVEN - Miscellaneous:

- a. Third Party Rights: Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the Parties hereto and their respective permitted successors and assigns.
- b. Integration: This Agreement represents the entire understanding between the Parties and may be modified only by a written document signed by both Parties.
- c. Assignment: Neither of the Parties may assign its rights and privileges or its duties and obligations under this Agreement without the written consent of the other Party. This Agreement shall inure to the benefit of each Party and their respective successors and assigns.
- d. Governing Law. This Agreement and the application of the terms contained herein shall be governed by the laws of the State of Illinois.
- e. Non-Waiver: Any failure or delay by any Party in instituting or prosecuting any actions or proceedings or in otherwise exercising its rights hereunder shall not operate as a waiver of any such rights or to deprive it of or limit such rights in any way.
- f. Headings: The headings contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.
- g. Invalidity: Should any provision of this Agreement be deemed by a court of competent jurisdiction to be invalid, the Agreement shall be rendered null and void and the Parties shall be restored to the legal positions occupied by them prior to the execution of this Agreement.

h. Counterparts: This Agreement may be executed in multiple, identical counter-parts and all said counterparts shall, taken together, constitute this integrated agreement.

SECTION EIGHT – NOTICES: All notices hereunder shall be in writing and must be served either personally or by registered or certified mail to:

A. The City at:
City of St. Charles
2 East Main Street
St. Charles, Illinois 60174
Attention: City Administrator

B. The Hotel at:
Hotel Baker
Mr. Joe Salas
100 W. Main Street
St. Charles, Illinois 60174

COPY TO:
Joseph J. Klein
2550 W. Golf Road, Suite 250
Rolling Meadows, IL 60008

C. To such other person or place which either Party hereto, by its prior written notice, shall designate for notice to it from the other Party hereto.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first above written.

CITY of ST. CHARLES

By: _____
Mayor

ATTEST:

City Clerk

JDB Investment Group LLC

By: _____

President

ATTEST:

Secretary

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donald P. DeWitte., Mayor of the City of St. Charles, and Nancy Garrison, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this date in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth; and the said City Clerk then and there acknowledged that she, as custodian of the corporate seal of said City, did affix the corporate seal of said City to said instrument, as her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2011.

Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, _____, of the Hotel Baker and _____, Secretary of the Hotel Baker, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, respectively appeared before me this date in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said Secretary then and there acknowledged that he, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument, as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2011.

Notary Public