

 <p>CITY OF ST. CHARLES ILLINOIS • 1834</p>	<b>AGENDA ITEM EXECUTIVE SUMMARY</b>		Agenda Item number: *5.J
	Title:	<b>Recommendation to Approve a Resolution Authorizing a Lease Agreement with the Fox Valley Aero Club</b>	
	Presenter:	Tim Wilson	
<b>Meeting:</b> Government Services Committee		<b>Date:</b> June 24, 2024	
<b>Proposed Cost:</b> NA		<b>Budgeted Amount:</b> NA	<b>Not Budgeted:</b> <input type="checkbox"/>
<b>TIF District:</b> None			
<b>Executive Summary</b> (if not budgeted, please explain):			
<p>The Fox Valley Aero Club (FVAC) Radio Controlled flying field is located at 3831 Karl Madsen Drive in St. Charles, IL. About 11.5 acres of land is owned by the City of St Charles and is leased by the FVAC. The site features an 800 by 50-foot paved runway with a paved taxiway and pit area. The paved runway is paralleled by a 900 by 75- foot short grass runway. There is also a dedicated flight area for helicopters. The club maintains a covered pavilion with electricity. The field is open to members for flying from sunrise to sunset, 365 days a year.</p> <p>The FVAC has leased the land from the City for the last 20 years. The club has been good stewards of the property and have continued to maintain the land. The current lease expired in April 2024 and City staff have updated the new lease. The City attorney has reviewed and approved the proposed lease agreement.</p> <p>The lease is currently being reviewed by the FVAC, pending the final exhibit drawings and FVAC signatures. It is the City recommendation to approve the proposed lease agreement with the FVAC. This lease is 10-year agreement with an additional 10-year option.</p>			
<b>Attachments</b> (please list):			
*Proposed Lease Agreement			
<b>Recommendation/Suggested Action</b> (briefly explain):			
Recommendation to Approve Resolution Authorizing a Lease Agreement with the Fox Valley Aero Club.			

## GROUND LEASE

**THIS GROUND LEASE** (hereinafter referred to as "lease"), is made and entered into this 7th day of July, 2024, by and between the **CITY OF ST. CHARLES**, an Illinois municipal corporation (hereinafter referred to as "Lessor"), and the **FOX VALLEY AERO CLUB**, an Illinois not-for-profit corporation (hereinafter referred to as "Lessee").

### WITNESSETH:

**WHEREAS**, Lessor is an Illinois municipal corporation, which as a governing body from time to time, owns, leases, mortgages or otherwise deals in and with real estate of various nature and description; and

**WHEREAS**, Lessee is an Illinois not-for-profit corporation functioning in the nature of a model aviation club which offers and encourages membership among the general public, and engages in and carries on activities, which include but are not limited to, those set forth on Exhibit A attached hereto and made a part hereof (hereinafter singly and collectively referred to as the "club purposes"); and

**WHEREAS**, Lessor is the owner and record title holder of a tract of land located at the Southwest corner of Route 38 and Peck Road, located in the City of St. Charles, Kane County, Illinois (hereinafter referred to as "underlying land"), legally described on Exhibit B attached hereto and made a part hereof, and a map or survey of which is attached hereto and made a part hereof as Exhibit C; and

**WHEREAS**, Lessee is desirous of leasing a portion of the underlying land (hereinafter referred to as the "demised premises"), legally described on Exhibit D attached hereto and made a part hereof, and a map or survey of which is attached hereto and made a part hereof as Exhibit E; and

**WHEREAS**, Lessee is further desirous of acquiring from Lessor a non-exclusive easement over and upon that part of the underlying land not otherwise demised herein (hereinafter referred to as the "remainder"), legally described on Exhibit F, attached hereto and made a part hereof, and a map or survey of which is attached hereto and made a part hereof as Exhibit G, for such purposes as set forth on Exhibit H attached hereto and made a part hereof (hereinafter singly and collectively referred to as the "flyover purposes"); and

**WHEREAS**, Lessor has designated the demised premises for the purpose of creating a model aviation airfield open to the general public, and Lessor and Lessee are both desirous to promote the same in an orderly fashion through the Lessee;

**THEREFORE**, in consideration of the mutual covenants herein contained the parties agree as follows:

## **SECTION ONE**

### **Recitals**

1.1 The above recitals are hereby incorporated into and made a part of this Agreement.

## **SECTION TWO**

### **Demise, Description, and Use**

2.1 Lessor hereby leases to Lessee, subject to the conditions and provisions herein contained, the real estate situated in St. Charles, Kane County, Illinois and the legally described on Exhibit B, and depicted on Exhibit C, each attached hereto and made a part hereof.

2.2 Lessor hereby grants to Lessee, pursuant to the terms and subject to the conditions set forth in the Lease, a non-exclusive easement for flyover purposes (as fuller defined in the Lease), and legally described on Exhibit F, and depicted on Exhibit G, each attached hereto and made a part hereof.

2.3 Lessor grants to Lessee a non-exclusive ingress and egress from Illinois Route 38 to the demised premises over and across certain roadway known as Karl Madsen Drive, as generally depicted on Exhibit I, attached hereto and made a part hereof.

2.4 The demised premises is hereby demised and let to Lessee in an "as-is where-is" condition, without any representations or warranties from Lessor, except as otherwise contained herein. Lessee acknowledges that this lease is subordinate and subject to all liens, encumbrances, deed restrictions, and any law, regulation, rule, order or ordinance of any governmental entity applicable to the demised premises or the use or occupancy thereof, in effect on the execution of this lease or thereafter promulgated. Lessee has examined the title to the demised premises and has found the same satisfactory.

## **SECTION THREE**

### **Term and Option to Renew**

3.1 The initial term of this lease shall be for a period often (10) years, commencing on July 1, 2024, and ending on June 30, 2034. As used herein, the expression "term hereof" refers to such initial term and to any renewal thereof as hereinafter provided.

3.2 Lessor hereby grants to Lessee, subject to the conditions and provisions herein contained, the right and option to renew this lease for an additional term often (10) years, commencing July 1, 2034 and ending June 30, 2044 at a rental hereinafter set forth. The option must be exercised by Lessee giving to Lessor, a written notice of such exercise not less than one hundred eighty (180) days prior to the termination date of the initial term hereof.

## **SECTION FOUR**

### **Rent Amount**

4.1 The rent for the first year of the initial term shall be the amount of Three Thousand Sixty and no/100 Dollars (\$3,050.00) payable on July 1, 2024, and a like sum on the 1st day of July of each consecutive year thereafter until the end of the initial term; provided however, upon prior written notice to Lessee, Lessor reserves the right to increase the rent during the initial term beginning on July 1, 2025, and on the first day of July of each consecutive year thereafter, to the then fair market rental value of similarly situated unimproved land use for agricultural crop purposes.

4.2 The total rent for the successive ten (10) year term hereof and the terms of payment shall be, as follows: For the first year of the successive term Lessee shall pay to Lessor on July 1, 2034 an amount equal to the rent Lessee paid during the last year of the initial term of this lease, and a like sum on the 1st day of July of each consecutive year thereafter until the end of the successive term; provided however, upon prior written notice to Lessee, Lessor reserves the right to increase the rent beginning on April 1, 2034, and on the first day of April of each consecutive year thereafter, to the then fair market rental value of similarly situated unimproved land use for agricultural crop purposes.

4.3 All rent shall be paid to Lessor, at 2 E. Main Street, St. Charles, Illinois 60174 (Attn: Finance Department) or such other place or places as may be designated from time to time by Lessor.

4.4 Lessee shall not be required to make any security deposit.

4.5 The present rent amount is, and any future rent increase will be, calculated only upon the acreage comprising the demised premises. The consideration for the easement grant located upon the remainder is included in the rent.

### **SECTION FIVE** **Warranties of Title and Quiet Possession**

5.1 Lessor covenants and warrants that Lessor is the record owner and title holder of the underlying land and demised premises and has full right to make this lease and that Lessee shall have quiet and peaceable possession of the demised premises during the term hereof; provided however, Lessor's covenant and warranty shall be subject to and limited by the public use of the underlying land and demised premises as set forth in this lease. Lessor agrees to enact no zoning regulation, restriction or other law directly governing and adversely affecting the intended use of the demised premises.

5.2 Lessor represents that the demised premises and remainder are located within the City limits of Lessor and under Lessor's sole jurisdiction, and that Lessor's present zoning laws, ordinances, regulations, laws, and the like, would include and allow Lessee to carry on its club purposes on the demised premises and flyover purposes with respect to the remainder.

5.3 Lessor represents that the demised premises and remainder presently qualify for the issuance of any required business, occupancy, or other regulatory license or permit necessary for engaging in and carrying on club purposes on the demised premises and flyover purposes with respect to the remainder, and Lessor shall immediately issue the same to Lessee at the commencement date of the initial term of this lease.

## **SECTION SIX**

### **Uses**

6.1 Lessee shall not permit the demised premises, or any part thereof, to be used for any purpose or purposes other than the club purposes.

6.2 Lessee shall not use the remainder, or any part thereof, for any purpose or purposes other than flyover purposes; provided however, Lessee may enter onto the remainder solely for the purpose of retrieval of downed aircraft.

6.3 Except as otherwise set forth in this lease, Lessee shall not have the right, power or permission to do any act or to make any agreement which may create, give rise to, or be the foundation for, any right, title, interest lien, charge or other encumbrance upon the estate of Lessor in the demised premises. Not in limitation of the foregoing, Lessee shall not permit any portion of the demised premises to be used by any person or persons or by the public, as such, at any time or times during the term of this lease, in such manner as might reasonably tend to impair Lessor's title to or interest in the demised premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to or with respect to the demised premises or any part thereof. Lessor may from time to time, but without affecting in any manner its rights or remedies in respect thereof should it elect or fail or refuse to so do, impose upon Lessee such rules or regulations as to the use or possession by any such persons or by the public as may reasonably be consistent with Lessor's protection against any such possible claim, all of which rules or regulations shall be fully and promptly performed and enforced by Tenant at Tenant's own cost and expense.

6.4 The parties agree that the demised premises and remainder (collectively sometimes referred to as "airfield") will also be open for use by the general public for the purpose of flying model aircraft, subject to the conditions and provisions herein contained; provided however, the parties understand that Lessee's use of the airfield, both intermittent and for scheduled events, shall encompass seven (7) days per week year-round from dawn to dusk. Notwithstanding the foregoing, the parties understand and agree that at such time as the land immediately West and adjoining the demised premises is developed with homes, should the noise levels of model the aircraft become a concern, Lessee agrees to adjust the hours of field use to reasonably address those concerns; in the absence of resolution on the part of the Lessee, Lessor and Lessee shall meet and work out appropriate hours of use.

6.5 Lessee shall have the authority (for purposes, including but not limited to, monitoring the orderly use of the airfield, maintenance and upkeep of the demised premises, and securing and maintaining public liability insurance through the Academy of Model Aeronautics) to make, post, and enforce rules and regulations for use of the airfield by members of the Lessee and the general public. To foster the continued use and enjoyment of the airfield by the general public and the Lessee, the rules and regulations may require for frequent and regular users of the airfield to share, by assessments, in Lessee's expenditures, including those related to the maintenance and upkeep of the demised premises. The rules and regulations shall not be inconsistent with Lessee's present rules and regulations (however, they may change from time to time consistent with new developments in the hobby), and shall adhere to the public purpose of the demised premises and the public purpose spirit of the legislative grant of the demised premises to the Lessor.

**SECTION SEVEN**  
**Lessor's Right of Entry**

7.1 Lessee shall permit Lessor and the agents and employees of Lessor to enter into and upon the demised premises at any time Lessee for the purpose of inspecting the same, provided that a planned activity is not interrupted, except in the case of an emergency.

**SECTION EIGHT**  
**Improvements**

8.1 Lessee may be allowed, contingent upon Lessor approval, to further construct on the demised premises during the course of the term hereof, other improvements necessary or desirable to carry on the club purposes, provided however, that Lessee shall be required to apply for the appropriate permit(s) and otherwise comply with all of the building, zoning and stormwater codes in effect at the time of construction.

8.2 Any improvement, or part thereof, constructed by Lessee on the demised premises, and all alterations, improvements, changes, or additions made in or to the demised premises shall be the property of the Lessee, and to the extent possible, Lessee may remove such improvements or parts thereof at any time or times, or may otherwise leave them on the demised premises at the termination of this lease in which case the same shall become the property of the Lessor.

8.3 Lessee shall, throughout the term hereof, at Lessee's sole cost and expense, keep and maintain the demised premises, including all improvements located thereon from time to time, in accordance with any and all applicable laws, guidelines and regulations.

8.4 Except as set forth above, no further material alterations of any kind shall be made without the prior written consent of the Lessor (which consent shall not be unreasonable delayed or denied) if such alterations would tend (i) to change the general

character or structure of the improvements on the demised premises, or (ii) to reduce or impair the value, rental, rental value, rentability or usefulness of the demised premises or any part thereof, provided, alteration of interior design not affecting structural components or the value or usefulness of the improvements shall not require Lessor's written consent.

8.5 Except as set forth above, no further material alterations shall be undertaken until Lessee shall have procured and paid for, so far as the same may be required from time to time, all generally required permits and authorizations of all municipal departments and governmental subdivisions having jurisdiction, and complied with all other legal requirements relating to the alterations.

8.6 Workmen's compensation insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims would be asserted against Lessor, Lessee or the demised premises, and general liability insurance for the mutual benefit of the Lessor and Lessee with limits of not less than \$1,000,000.00 in the event of bodily injury or death to one person and not less than \$5,000,000.00 in the event of bodily injury or death to any number of persons in any one accident, and with limits of not less than \$1,000,000.00 damages or injury to property with not more than \$5,000.00 deductible, shall be maintained by Lessee at Lessee's sole cost and expense at all times when any substantial work is in progress in connection with any alterations. Lessee shall provide Lessor with current insurance policies on an annual basis. All such insurance, if readily obtainable, shall be affected under standard form policies issued by insurers of recognized responsibility, which are well rated by national rating organizations.

**SECTION NINE**  
**Subletting/Liens/Taxes**

9.1 Lessee shall not sublet, assign, mortgage or otherwise transfer this lease or any interest therein, under a separate agreement without the previous written consent of Lessor, in its sole and absolute discretion, to any such sublet, assignment, mortgage or other transfer. Any such sublet, assign, mortgage or otherwise transfer without first obtaining the written consent of the Lessor shall not vest in the sublettee, assignee, mortgagee, or transferee any right, or interest, herein or hereunder or in the demised premises, and shall render this lease null and void at the election of Lessor. Lessee shall be allowed to invite other entities to temporarily schedule and conduct activities on the airfield.

9.2 Lessee will not directly or indirectly create or permit to be created, any lien, encumbrance or charge on, or pledge of, the demised premises or any part thereof, and Lessee shall cause the same to be discharged.

9.3 Although the parties agree the demised premises shall remain tax exempt for Lessee's use, all real property taxes and personal property taxes and/or assessments levied or

assessed against the demised premises, if not exempt, shall be paid by Lessee, commencing on the date Lessee takes possession of the demised premises. Lessee, upon demand shall deliver to Lessor copies of proper and sufficient receipt and other evidence of the payment and discharge of same. Lessor shall cooperate with Lessee in vigorously opposing the inclusion of the demised premises as non-exempt.

**SECTION TEN**  
**Insurance & Indemnification**

10.1 Insurance:

(a) So long as this lease remains in effect, Lessee, at its expense, will maintain, or cause to be maintained with insurers approved by Lessor (which approval shall not be unreasonably withheld): (i) insurance with respect to the improvements against loss or damage by fire, lightning and other risks from time to time included under extended coverage endorsements, in amounts sufficient to prevent Lessor or Lessee from becoming a coinsurer of any partial loss under the applicable policies, but in any event in amounts equal to 100% of the full replacement value of the improvements (exclusive of the cost of foundations and excavations), less physical depreciation; (ii) comprehensive general liability in limits not less than \$1,000,000.00 per occurrence and \$3,000,000.00 in the aggregate. The insurance policies or certificates thereof shall be held by Lessee with copies provided to Lessor upon request. In the event that the improvements or any substantial portion thereof shall be destroyed or seriously damaged, the proceeds, when collected in cash by the Lessee, shall be held in trust and applied to the performance of the Lessee of all the covenants, agreements, terms and provisions of this lease until the repair, restoration or reconstruction of the improvements shall be completed as provided for in this lease. Further, the coverage limits of liability insurance shall be subject to review and alteration by the Lessor every two (2) years.

(b) All insurance required to be maintained pursuant to this lease (i) shall name Lessor and Lessee as insureds, as their respective interests may appear; and (ii) provide that no cancellation thereof shall be effective until at least thirty (30) days after receipt by Lessor and Lessee of written notice thereof. Any insurance required to be maintained by Lessee pursuant to this lease may be evidenced by blanket insurance policies covering the demised premises and other property or assets, provided that any such policies of the type referred to in this lease shall, in all respects, comply with the requirements of this lease. All insurance proceeds, if any, paid to the Lessee shall be held in trust by Lessee for application in the manner provided in this lease.

(c) Lessee will promptly deliver to Lessor copies of all insurance policies, or certificates thereof, with respect to the demised premises, which Lessee is required to maintain pursuant to this lease.

10.2 To the extent as allowable by law, Lessor shall not be liable for any loss, injury, death, or damage to persons or property at any time which may be suffered or sustained by Lessee or by any person whosoever who may at any time be using, occupying or visiting the



demised premises, or to off-site land where damage is inflicted, or be in, on, or about the same, where such loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Lessee or of any occupant, subtenant, visitor, or user of any portion of the demised premises, and Lessee shall indemnify Lessor against all claims, liability, loss, or damage, including reasonable attorneys' fees, whatsoever with respect to the same.

**SECTION ELEVEN**  
**Notice of Default**

11.1 Except as to the timely payment of rent, Lessee shall not be deemed to be in default of any of the provisions in this lease unless Lessor shall first give Lessee thirty (30) days written notice of such default and Lessee fails to cure such default with sixty (60) days after receipt of such written notice, or, if the default is of such nature that it cannot be cured within the sixty (60) day period, Lessee fails to commence to cure such default within such sixty (60) day period or fails thereafter to proceed to the curing of such default with all possible diligence.

**SECTION TWELVE**  
**Eminent Domain**

12.1 In the event the entire demised premises shall be taken under the power of eminent domain by any public or quasi-public authority, this lease shall terminate and expire as of the date of such taking, and Lessee shall thereupon be released from any liability thereafter accruing hereunder.

12.2 In the event a portion of the demised premises shall be taken under the power of eminent domain by any public or quasi-public authority, and Lessee determines in its sole discretion that the remaining land of the demised premises shall no longer be suitable for club purposes, Lessee shall have the right to terminate this lease as of the date of such taking on upon giving Lessor written notice of such terminations within six (6) months after the date of such taking.

12.3 In the event the remainder (as previously defined), or any part thereof, shall be taken under the power of eminent domain by any public or quasi-public authority, and Lessee determines in its sole discretion that the demised premises shall no longer be suitable for club purposes as a result of such taking, Lessee shall have the right to terminate this lease as of the date of such taking on upon giving Lessor written notice of such terminations within six (6) months after the date of such taking.

12.4 In the event of total or partial taking of the demised premises and/or the remainder (as previously defined) by eminent domain, then in any condemnation proceedings

Lessor and Lessee shall each be free to make their respective claim(s) against the condemning or taking authority for damages done to them, respectively, as a result thereof.

12.5 In the event of partial taking of the demised premises and this lease is not terminated, the rent amount shall be reduced proportionately.

### **SECTION THIRTEEN**

#### **Waiver**

13.1 The waiver by Lessor of, or the failure of Lessor to take action with respect to, any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same, or any other terms, covenant or condition therein contained.

### **SECTION FOURTEEN**

#### **Termination**

14.1 Notwithstanding anything in this lease to the contrary, upon cessation or termination of Lessee and/or its operations or abandonment of the demised premises by Lessee, this lease shall immediately terminate and Lessee shall be required, at its cost, to remove all Improvements, as provided for in Section 8 above, prior to termination.

14.2 Upon the expiration or termination of this lease, Lessee shall quit and surrender the demised premises to Lessor pursuant to Section 14.1 above.

### **SECTION FIFTEEN**

#### **Miscellaneous**

15.1 In any action at law or in equity brought to enforce any of the covenants, terms or conditions of this lease, the substantially prevailing party shall be entitled to recover from the substantially non-prevailing party the costs, expenses and reasonable attorneys' fees of the prevailing party, all of which shall be made a part of any judgment or decree entered.

15.2 The covenants and conditions herein contained shall inure to the benefit of and be binding upon the respective successors, assigns, grantors and grantees of all the parties hereto, and shall run with the land.

15.3 The captions appearing under the section number designations are for convenience only and do not in any way limit or amplify the terms and provisions of this lease.

15.4 All notices, demands, or other writings necessary under this lease, shall be made in writing and deemed to have been given and served on the date of mailing the same by certified mail, return receipt requested, or on the date served by personal service, to the parties at the

following addresses, or by transmission, via email to the addresses below (or such other addresses as the parties may designate from time to time):

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

Lessee: Fox Valley Aero Club

\_\_\_\_\_  
\_\_\_\_\_  
Attn: Club President  
Email: \_\_\_\_\_

15.5 The parties shall execute a memorandum of this lease for recording purposes. A separate memorandum shall be executed by the parties with respect to the easement for recording purposes.

15.6 Multiple counterparts of this lease may be signed, all of which shall be deemed originals.

15.7 Simultaneous to the execution of this lease, the parties shall provide each other with certified copies of their respective corporate resolutions authorizing the execution of this lease by each respective party.

15.8 If any provision of this lease shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this lease.

15.9 Time is of the essence of this lease.

**IN WITNESS WHEREOF**, the parties have executed this lease on the day and year first above written.

Lessor:  
City of St. Charles, an Illinois  
Municipal Corporation

Lessee:  
Fox Valley Aero Club, an Illinois  
not-for-profit Corporation

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
President

Attest: \_\_\_\_\_  
City Clerk

Attest: \_\_\_\_\_  
Secretary

**Exhibit A**  
**Club Purposes**

**Charter Purpose:**

- (a) To create an interest in model airplane building, promote model airplane flying, sponsor model airplane contests, and to secure cooperative action in advancing common purposes of the member of the Club.
  
- (b) To do anything necessary and proper for the accomplishment of any purposes set forth in the statement of principles and rules and regulations adopted by the founders of this Club.
  
- (c) This Club is organized and operated exclusively for the above-stated purposes, and for other non-profit purposes, and no part of any net earning shall inure to the benefit of any private member.

**Other Purposes or Activities Consistent with The Charter Purpose:**

To engage in and carry on a general model aviation club, for purposes including but not limited to, flying model aircraft of every nature and description.

To promote and engage in nationally advertised and participated Academy of Model Aeronautics and International Miniature Aircraft Association sanctioned flying festivals, regional flying festivals and races, and any and all types of flying shows.

Storage of club equipment.

Providing of temporary mobile sanitary facilities.

To engage and solicit membership from and among the general public.

Such additional or other activities typically associated with clubs of this nature.

**Exhibit H**  
**Remainder (Easement) Purposes**

To use the remainder airspace for flying model aircraft of every nature and description. To enter upon the remainder for purposes of recovering model aircraft.

Such other or incidental purposes necessary or desirable to facilitate the foregoing.