



The City Council of the City of St. Charles welcomes you to its Special Meeting of Thursday, August 7, 2014 at 5:00 p.m. at 830 Whitewater Avenue, City Council Chambers, St. Charles, Minnesota. Only the items listed for the Special Meeting will be discussed.

ITEM	ACTION REQUESTED
1. Call to Order	
2. Pledge of Allegiance	
3. Approval of the Agenda	
4. Ordinance #569 Authorizing the Sale of Real Property to Active Tool & Die	APPROVE
5. Resolution #28-2014 Approving the Sale of Real Property to Active Tool & Die	APPROVE
6. Temporary License To Access and Construct Improvements	APPROVE

**UNSCHEDULED PUBLIC APPEARANCES:** Members of the audience may address any item not on the agenda. State Statute prohibits the City Council from discussing an item that is not on the agenda, but the City Council does listen to your concerns and has staff follow up on any questions you raise.

**ADJOURNMENT**

**\*Attachment. Questions? Contact Nick Koverman at St. Charles City Hall at 932-3020 or by email at [nkoverman@stcharlesmn.org](mailto:nkoverman@stcharlesmn.org).**



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MEMORANDUM for the CITY COUNCIL of St. Charles for  
Thursday, August 7, 2014

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**4. Ordinance #569 Authorizing the Sale of Real Property to Active Tool & Die.** Please see the enclosed ordinance. In addition, the Certificate of Survey and Development Agreement will be presented as Exhibits.

**5. Resolution #28-2014 Approving the Sale of Real Property to Active Tool & Die.** The enclosed resolution is presented for consideration for the sale of real property by the City of St. Charles and dispensing with the review by the St. Charles Planning Commission.

**6. Temporary License To Access and Construct Improvements.** A temporary License to Construct was recommended in order to help meet the project timeline of August 11<sup>th</sup> in case a closing date was not attainable.

**CITY OF ST. CHARLES**

**ORDINANCE #569**

**AN EMERGENCY ORDINANCE OF THE CITY OF ST. CHARLES, MINNESOTA,  
AUTHORIZING THE SALE OF REAL PROPERTY TO ACTIVE TOOL & DIE, INC.**

**Preamble:** City Charter Section 3.09 requires two readings of ordinances plus 30 days following publication before an ordinance becomes effective, except for emergency ordinances.

Charter Section 3.06, Emergency Ordinances, provides in part as follows:

“An emergency ordinance is an ordinance necessary for the immediate preservation of the public peace, health, morals, safety or welfare in which the emergency is defined and declared in a preamble thereto and is adopted by a vote of at least three of the voting members of the council.”

The buyer of the below described Property (“Property”), Active Tool & Die, Inc., (“ATD”), has indicated that they need to close on the Property as soon as possible to meet their construction schedule set to start August 11, 2014, and that failure to meet said date could be detrimental to the sale of the Property and their ability to proceed with their project to construct a new building and expand their business in the City’s business park.

The City and ATD are parties to a Development Agreement, dated June 1, 2014, providing financing for the proposed sale of the Property and facilitating the new building and expansion of ATD in the City’s business park.

Based on the above typical City ordinance adoption process in Charter and the additional unique requirement in the Charter that sale of City-owned property requires passage of such an ordinance, as opposed to the far more common passage of a resolution for the sale of property, the closing on the Property would be delayed as much as 60 days if the City follows the typical Charter procedures.

The City Council finds that it is in the public interest to sell the Property to ATD and to facilitate the construction schedule of ATD in order to allow the Project to move forward in the City’s business park and to forestall any negative consequences to the City and ATD resulting from the delay caused by the general ordinance adoption procedure. The City has made considerable investment in the business park and with respect to ATD’s project to date. The City finds that the ordinance delay resulting from following the typical ordinance adoption procedure could potentially jeopardize the Project and the City’s investments. As a result and to facilitate ATD’s construction schedule, immediate consideration and action by the City Council is necessary pursuant to City Charter, Section 3.06, Emergency Ordinances, to preserve and protect the public welfare.

**THE CITY OF ST. CHARLES DOES ORDAIN:**

Section 1. The St. Charles City Council hereby authorizes the sale and conveyance of real property legally described as:

**The South 267.35 feet of Lot 1, Block 2, Chattanooga Innovation Park, City of St. Charles, Winona County, Minnesota**

to Active Tool & Die, Inc. by quitclaim deed pursuant to the terms and conditions of sale set forth in a certain Vacant Land Purchase Agreement between the City and Active Tool & Die, Inc. and that certain Development Agreement between the same parties dated June 1, 2014.

Section 2. This ordinance shall take effect immediately upon its adoption and shall be subsequently published.

Adopted this 7th day of August, 2014 by the City Council of the City of St. Charles, Minnesota.

\_\_\_\_\_  
**William J. Spitzer, Mayor**

Attest:

\_\_\_\_\_  
**Nick Koverman, City Administrator**

*Published:*

Date: \_\_\_\_\_

**CITY OF ST. CHARLES, MINNESOTA  
RESOLUTION #28-2014**

**A RESOLUTION BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ST.  
CHARLES, MINNESOTA, APPROVING THE SALE OF REAL PROPERTY IN ST.  
CHARLES, MINNESOTA, AND DISPENSING WITH REVIEW OF THE SALE BY THE  
ST. CHARLES PLANNING COMMISSION**

**WHEREAS,** The City of St. Charles ("City") desires to sell certain real property located in St. Charles, Minnesota, legally described as:

**The South 267.35 feet of Lot 1, Block 2, Chattanooga Innovation Park, City of St. Charles, Winona County, Minnesota**

, referred to herein as the "Property"; and

**WHEREAS,** the buyer of the Property, Active Tool & Die, Inc. ("AT&D") is willing to purchase the Property from the City in accordance with that certain Development Agreement, dated June 1, 2014, providing for the financing for the proposed sale of the Property, which Development Agreement is incorporated herein by reference; and

**WHEREAS,** a draft purchase agreement has been prepared in accordance with the Development Agreement and is attached hereto as Exhibit A; and

**WHEREAS,** in accordance with the attached draft purchase agreement, the City and AT&D expressly understand and agree that the sale of the Property is contingent upon approval by the City Council of the City of St. Charles; and

**WHEREAS,** if any transaction approval as provided in the purchase agreement is not obtained by the closing date stated in the purchase agreement, the purchase agreement shall then be null and void, without further obligation by either party; and

**WHEREAS,** Section 12.05 of the City Charter of the City of St. Charles also provides that no real property of the City may be disposed of except by ordinance; and

**WHEREAS,** the City adopted such an emergency ordinance, #569, dated August 7, 2014, approving the sale of the Property by the City; and

**WHEREAS,** Minnesota Statutes, Section 462.356, subdivision 2 states that no publicly owned interest in real property within a city shall be acquired or disposed of until after the planning commission has reviewed the proposed acquisition or disposal and reported in writing to the city council its findings as to compliance of the proposed acquisition or disposal with the comprehensive plan; and

**WHEREAS,** the same statute further states, however, that the city council may, by resolution adopted by two-thirds vote, dispense with the requirements of this subdivision when in its judgment it finds that the acquisition or disposal of real property has no relationship to the comprehensive plan.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL THAT:**

The City Council hereby finds that the proposed sale of the Property by the City of St. Charles has no relationship to the City's Comprehensive Plan, and therefore review of the proposed sale by the St. Charles Planning Commission is not required under Minn. Stat. § 462.356, Subd. 2, and is hereby dispensed with as allowed by that statute.

**BE IT FURTHER RESOLVED THAT:** The City Council hereby approves the attached purchase agreement and authorizes and directs the Mayor and City Administrator to execute the purchase agreement substantially in the form hereby approved and such other documents as are necessary to close on the sale of the Property by the City of St. Charles to AT&D and that AT&D record the same in the Office of the Winona County Recorder.

**PASSED** by the City Council of the City of St. Charles on this 7th day of August, 2014.

**ATTEST**

\_\_\_\_\_  
**Nick Koverman, City Administrator**

\_\_\_\_\_  
**William J. Spitzer, Mayor**

VOTE:     \_\_\_ SPITZER   \_\_\_ BRAUN   \_\_\_ GETZ   \_\_\_ DAHL   \_\_\_ SCHABER

**TEMPORARY LICENSE TO ACCESS AND CONSTRUCT IMPROVEMENTS  
ON PROPERTY TO BE SOLD**

**This License Agreement (“License” or “Agreement”)** is made as of the 7th day of August, 2014, by and between the City of St. Charles, a municipal corporation under the laws of the State of Minnesota (“City” or “Licensor”), and Active Tool & Die, a Minnesota corporation (“ATD” or “Licensee”).

WHEREAS, the City wishes to sell and ATD wishes to purchase vacant land located in the City of St. Charles, Winona County, Minnesota, legally described as follows:

**The South 267.35 feet of Lot 1, Block 2, Chattanooga Innovation  
Park, City of St. Charles, Winona County, Minnesota**

(the Property); and

WHEREAS, the City and ATD have executed a Development Agreement, dated June 1, 2014 pertaining to the Property; and

WHEREAS, the City and ATD have also agreed upon a purchase agreement for the sale of the Property to ATD and the same has been executed by ATD and approved by the City Council for execution; and

WHEREAS, pursuant to Section 12.05 of the St. Charles City Charter, no property may be disposed of by the City absent an ordinance approving such disposition; and

WHEREAS, ATD wishes to break ground on construction of improvements to the Property on August 11, 2014; and

WHEREAS, due to unforeseen delays and procedural requirements for ordinance adoption, closing on the Property cannot occur until after August 11, 2014; and

WHEREAS, Pursuant to the terms and conditions herein, City desires to allow ATD to begin construction of improvements upon the Property following execution hereof prior to closing on the Property and also desires to close on the Property as soon as possible.

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. **LICENSE.** Subject to ATD receiving all applicable and required permits and approvals for its Project on the Property, the City hereby grants to ATD a license to access the Property prior to closing on the sale thereof **for construction**

**purposes for their new building and improvements on the Property, including but not limited to site preparation, for the Project pursuant to those plans and specifications and applicable permits that are required and have been approved by the City.** The license granted to ATD herein shall be exclusive, except that the City shall have the right to access the Property or permit agents of third-party owners of utility facilities on the Property to access the Property for the purpose of maintaining, repairing or relocating existing utility facilities therein as necessary. Any such access by the City or any third party shall be coordinated with ATD to the fullest extent possible under the circumstances. ATD may enter into agreements and contracts for relocation or removal of utilities on the Property.

2. **TERM.** This License shall commence on the date of approval of this Agreement by the City Council and following execution by both parties, and shall terminate upon closing of the sale of the Property by the City to ATD. In the event the sale of the Property does not close by August 31, 2014, this License shall expire without further action by the City Council and all work on the Project upon the Property by Licensee shall cease effective therewith, unless the License term is otherwise extended by action of the City Council prior to said date. If the sale fails to close for any reason such that the sale of the Property does not occur, the City shall not be liable for any costs or expenses incurred by ATD related to the same or for any improvements made by ATD on the Property, and the City may require, at the City's option, removal of said improvements and/or require ATD to restore the Property to its pre-License original condition at ATD's cost and expense. In such event of failure to close and should ATD not comply with the foregoing as directed by the City, the City may remove or restore as proved above herein and invoice ATD for such costs with reimbursement by ATD to the City required within 30 days of the date of an invoice from the City to ATD.
3. **CONDITION OF PREMISES NOT WARRANTED.** The City does not warrant that the Property is suitable for the purposes for which it is permitted to be used under this Agreement, and ATD assumes all risk and liability with respect to its activities within and use of the Property, except as explicitly set forth in this Agreement or in the Development Agreement. The City shall have no responsibility with regard to any failure of or damage to ATD's improvements within the Property.
4. **COVENANTS TO INDEMNIFY AND HOLD HARMLESS.** Licensee shall indemnify, protect, save, hold harmless and insure City, and its respective officers, directors, employees and members and agents, from and against any and all claims and demands for, or litigation with respect to, all damages, including expenses, reasonable attorneys' fees, and costs of alternative dispute resolution, which may arise out of or be caused by Licensee or its agents, employees, contractors, with respect to Licensee's use of the Property. Licensee shall defend City against the foregoing, or litigation in connection with the foregoing, at Licensee's expense, with counsel reasonably acceptable to City. The

indemnification provision of this Paragraph shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of City. All indemnification obligations shall survive termination, expiration or cancellation of this License.

5. **WAIVER AND ASSUMPTION OF RISK.** Licensee further knows, understands and acknowledges the risks and hazards associated with using the Property for the purposes permitted herein and the improvements thereon and hereby assumes any and all risks and hazards associated therewith. Licensee hereby irrevocably waives any and all claims against the Licensor or any of its officials, employees or agents for any bodily injury (including death), loss or property damage incurred by the Licensee as a result of using the Property or any of Licensee's activities or improvements thereon, and hereby irrevocably releases and discharges the Licensor and any of its officials, employees or agents from any and all such claims of liability related to the Property, the improvements thereon, or the Licensor's maintenance, repair or other work conducted within the Property by the Licensee or any other third party, except those resulting from the negligence or intentional misconduct of the Licensor.
6. **INSURANCE.** The Licensee, before undertaking any work on the Property, shall have itself, if it will be performing Project work on the Property, or will require that its contractors maintain in effect, bodily injury liability insurance and property damage insurance with limits not less than the maximum liability limits for a municipality as provided in Minnesota Statutes, Section 466.04 or the amount stated in the Licensee's or contractor's insurance certificate, whichever is greater.
7. **MECHANIC'S LIENS.** The Licensee hereby covenants and agrees that the Licensee will not permit or allow any mechanic's or materialman's liens to be placed on the Licensor's interest in the Property during the term hereof for labor performed or material supplied in connection with any work or improvements performed or caused to be performed by the Licensee. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on the Licensor's interest, the Licensee shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that the Licensee may contest any such lien provided the Licensee first provides adequate security protecting the Licensor against such lien.
8. **ATTORNEYS' FEES.** If any action at law or in equity shall be brought by Licensor on account of any breach of this License Agreement by Licensee or for the recovery of the possession of the Property, Licensor shall be entitled to recover from Licensee reasonable attorney's fees, the amount of which shall be fixed by the Court and shall be made a part of any judgment or decree rendered.
9. **RECITALS.** The recitals to this Agreement are made a part hereof and incorporated herein by reference.

10. VOLUNTARY AND KNOWING ACTION. The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
11. AUTHORIZED SIGNATORIES. The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
12. GOVERNING LAW. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Minnesota.
13. ENTIRE AGREEMENT. This Agreement shall constitute the entire agreement of the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this agreement.
14. MODIFICATION OF AGREEMENT. Any modification of this Agreement shall be binding only if evidenced in writing signed by both parties.
15. NOT PARTNERSHIP, JOINT VENTURE, OR FIDUCIARY RELATIONSHIP CREATED HEREBY. Nothing contained in this License Agreement shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the Licensor and the Licensee.
16. CUMULATIVE RIGHTS. Except as otherwise expressly stated herein, no right or remedy herein conferred on or reserved to the Licensor or the Licensee is intended to be exclusive of any other right or remedy hereby provided by law, but each shall be cumulative in, and in addition to, every other right or remedy given herein or hereafter existing at law, in equity, or by statute.
17. COMPLIANCE WITH LAWS. Licensee shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, improvements, personal property, programs and staff for which Licensee is responsible.
18. NO WAIVER. Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this

Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.

19. SEVERABILITY. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
20. HEADINGS AND CAPTIONS. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.
21. SURVIVABILITY. All covenants, indemnities, guarantees, releases, representations and warranties by any party or parties, and any undischarged obligations of City and Licensee arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.
22. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[signature page follows]

**IN WITNESS WHEREOF**, the parties have caused this License to be executed as of the date first above mentioned.

**LICENSEE: ACTIVE TOOL & DIE, INC.**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Darin Ihrke, Its CEO

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF WINONA    )

This instrument was acknowledged before me on \_\_\_\_\_, 2014, by Darin Ihrke, the Chief Executive Officer of Active Tool & Die, Inc.

(Notary Seal)

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

**LICENSOR: CITY OF ST. CHARLES, MINNESOTA**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Bill Spitzer, Its Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Nick Koverman, Its City Administrator

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF WINONA    )

This instrument was acknowledged before me on \_\_\_\_\_, 2014, by Bill Spitzer, the Mayor, and by Nick Koverman, the City Administrator of the City of St. Charles, Minnesota.

(Notary Seal)

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