

Bessemer, Alabama

January 22, 2017

The Council of the City of Bessemer, Alabama met in special session in the Council's Chamber of the City Hall in said City on Monday, January 22, 2017 at 1:09 p.m. Central Time. The purpose of the special called meeting was to discuss matters relating to the lease of unneeded municipal real estate to ITAFILM, LLC. The meeting was called to order by Councilor Ronald Marshall who was Chairman of the meeting. Wanda Taylor was the City Clerk of the meeting. Upon roll call, the following were found to be present: Councilors Chester Porter, Donna Thigpen, David Vance and Ron Marshall. Absent: Councilors Cynthia Donald, Jesse Matthews and Cleophus King. The City Clerk Wanda Taylor stated that a quorum was present and the meeting was opened for the transaction of business.

The following public notice was posted for this meeting:

NOTICE OF SPECIAL MEETING

CITY COUNCIL OF THE CITY OF BESSEMER, ALABAMA

TO: ALL COUNCIL MEMBERS
FROM: COUNCILORS RONALD MARSHALL AND CHESTER W. PORTER
DATE: FRIDAY, JANUARY 19, 2018

Councilors Ronald Marshall and Chester W. Porter hereby give notice pursuant to *Code of Alabama §11-43-50 (1975)* that the City Council of the City of Bessemer, Alabama, will hold a special called meeting of the City Council as follows:

TIME: 1:00 p.m. CST
DATE: Monday, January 22, 2018
**PLACE: Bessemer City Hall
Council Chambers
1700 Third Avenue North
Bessemer, Alabama 35020**

AGENDA:

1. Ordinance authorizing the lease of unneeded municipal real estate to ITAFILM, LLC.

Attorney Paden stated that this is an ordinance first to declare the old city hall building as surplus property with the exception of the auditorium and to lease the building for filming purposes to ITAFILM, LLC. Attorney Paden stated that there are two filming dates for three hundred a day which has been paid to Mayor Gulley Assistant Toraine Norris.

Attorney Paden stated that he has an insurance certificate from ITAFILM, LLC naming the city as an additional insured on their one million dollar policy in the event that anything goes wrong.

Councilor Marshall invited Eric Major (Location Scout/ Manager of ITAFILM, LLC) to address the council. Mr. Major stated that today is their first day of filming at the old city hall and they have other filming locations in the city of Bessemer, one being Torne Foods, 15th Street by the old dead iron bridge, R&C Plumbing and a few roads on the outskirts of the city. Mr. Major stated that they are excited to be in the city of Bessemer. Mr. Major stated that he worked on Trading Paint starring John Travolta which was filmed in the area. Mr. Major stated that the city has been great and they will be filming for about 4 ½ weeks.

Councilor Porter made a motion to consider the ordinance declaring the old city hall property as surplus. Councilor Vance seconded the motion and upon roll call the following votes were recorded: Ayes: Councilors Marshall, Porter, Thigpen, and Vance. Nays: None. The motion carried.

Councilor Thigpen made a motion to approve the ordinance declaring the old city hall a surplus excluding the auditorium and to lease it to ITAFILM, LLC. Councilor Vance seconded the motion and upon roll call the following votes were recorded: Ayes: Councilors Marshall, Porter, Thigpen, and Vance. Nays: None. The motion carried.

ORDINANCE NO. 3575

AN ORDINANCE AUTHORIZING THE LEASE OF UNNEEDED MUNICIPAL REAL ESTATE TO ITAFILM, LLC

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BESSEMER,
ALABAMA, AS FOLLOWS:

Section 1. It is hereby established and declared that the following described real property of the City of Bessemer, Alabama (the "Premises") is no longer needed for public or municipal purposes, to-wit:

1800 – 1810 3rd Avenue North, Bessemer, Alabama 35020 (excluding the Bessemer Auditorium) and being further described as:

Lots 14 to 20, Block 260, according to the Survey of the City of Bessemer, as recorded in Map Book 2, Page 14, in the Probate Office of Jefferson County, Alabama, Bessemer Division.

Section 2. The City of Bessemer, Alabama (the "City"), having received an offer from ITAFILM, LLC to lease the Property described in Section 1, above, in connection with the motion picture currently entitled "Into the Ashes" (the "Production") for rehearsing, photographing, filming and recording scenes and sounds for the Picture, hereby declares it to be in the best interest of the public and the City of Bessemer, Alabama, to lease said Property to ITAFILM, LLC (hereinafter referred to as "Company") under the following conditions, to-wit:

1. *Grant of Use.* The City agrees to permit Company permission to use the property located at 1800-1810 3rd Avenue N., Bessemer, Alabama 35020, which includes the Payroll Office and the main floor of the old City Hall ("Premises") in connection with producing the motion picture entitled "Into the Ashes" ("Production"). Said Company shall have the authority to use the Premises for rehearsing, photographing, filming recording scenes and sounds for the Motion Picture. Use by the Company shall include, but not limited to, the Company and its licensees, sponsors, assigns and successors for the filming and such activity that may exhibit, advertise and promote the Motion Picture or any portion thereof, whether or not such uses contain audio and/or visual reproductions of the Premises and/or any related logo(s) and trademark(s), and whether or not the Property and/or any related logo(s) and trademark(s) is identified, in any and all media now known or hereafter devised in all countries of the world throughout the universe and in perpetuity. Any and all filming and recording of any scenes and sounds for the Production on the Premises shall be solely and exclusively determined by Company, and the City shall have no right of approval or restriction of usage in respect thereto nor shall the City have any right to prevent the filming and recording of any scenes and sounds for the Production by Company. As used herein, "Premises" includes all interior and exterior areas of the Premises and all personal property located in, on and/or about the Premises.

2. *Term, Time of Access.* The undersigned agrees to provide exclusive possession and unlimited time of access to the Premises for the use of the Company for a period of _____ (____) days commencing on or about the ____ day of _____, 2018, and the expected end of the Production including preparation, shooting and wrap up (cleanup/restoration of property to its pre-leased condition) will be the ____ day of _____, 2018, where the proposed schedule for utilizing the Premises is as follows:

_____ Days needed for Preparation: (List exact dates)

_____, 2018 through _____, 2018

_____ Days needed for Shooting: (List exact dates)

_____, 2018 through _____, 2018

_____ Days needed for Wrap up: (List exact dates)

_____, 2018 through _____, 2018

3. *Extension of Term.* If because of the illness or unavailability of the any producer, personnel, weather conditions or any other occurrence beyond Company's control, the Term of this Agreement may be extended for additional days as mutually agreed upon with the City and at the previously agreed upon daily rates.

4. *Compensation.* In full and complete consideration for Company's use of the Premises, and for all rights granted to Company pursuant to the terms hereof, Company shall pay City, the total sum of _____ and 00/100 Dollars (\$____.00), payable as follows:

- a. An initial lump sum payment equal to the total estimated ____ days of shooting in the amount of \$_____.
- b. The rate for each stage of production will be as follows:
 - i. Preparation days: ____ days at \$0.00 per day;
 - ii. Shooting Days: ____ days at \$300.00 per day;
 - iii. Wrap days: ____ days at \$0.00 per day;

5. *Condition of Location.* City provides the Premises "as is" which means that no modifications or improvements will be made by the City, including utilities such as water, sewer, electric, gas, etc. may or may not be on and usable in all parts of the building and/or/ the central heating and air conditioning unit may or may not be operational. Company agrees that no improvements, repairs or modifications will be made by the City at the Premises and that Company fully assumes risk for utilizing Premises "as is". Company shall keep Premises free of trash and debris and maintain Premises in an orderly fashion so as not to create an eyesore or hazard or nuisance.

6. *Right of Access.* No restrictions by City exists on the right of access or use of the Premises, except as provided in Paragraph 1 and that Company should use Premises in a manner so as to limit nuisance of neighbors and the public and cannot block or impede the flow of traffic of any street or alley, near or adjacent without prior approval from the Chief of Police. Company shall have the right to bring personnel and equipment (including props and temporary sets) onto the Property and to remove same after completion of its use of the Property here under. Company shall have the right, but not the obligation, to photograph, film and use in the Picture the actual name, if any, and/or any related logo(s) and trademark(s) connected with the Property, or any other name for the Property. If Company depicts the interior(s) and/or exterior(s) of any structures located on the Property, Grantors agree that Company shall not be required to depict such interior(s) and/or exterior(s) in any particular manner in the Picture. Additionally, Company shall have the right to depict exterior(s) of the Property in any set construction in connection with such exteriors for use in the Picture.

7. *Alteration to Premises.* Company hereby agrees that (with City's permission) if it becomes necessary to change, alter, or rearrange any equipment on the Premises belonging to City, or the appearance of the Premises belonging to the City, Company shall return and restore said equipment to its original place and condition, or repair it, if necessary, and, if applicable, restore the appearance of the Property to its original condition, using the same material and finishes, unless otherwise approved by the City. Upon completion of the use of the property by the company, the Company will return the property in as good as original leased condition, ordinary wear and tear excepted.

8. *Improvements to Premises at Company's Expense.* Not Applicable.

9. *Security.* Company hereby agrees to provide 24/7 security from an off duty Bessemer Police Officer and such compensation will be at the customary rate established by the Chief of Police. Company is responsible to maintain security services during the term of this Agreement. City will issue keys to Company representative upon arrival/execution of this Agreement and keys will be returned to City before final departure on the last day of Wrap up date. Company is responsible for securing facility at the conclusion of operations each day. Use of an off duty City of Bessemer Police Department Officer as security is not a warranty or representation that the City or its agent is responsible for damage or theft of any property located on said Premises by Company during the term of this Agreement.

10. *Laws and Ordinances.* In its use of this location, the Company shall comply with all applicable laws and ordinances. All permits required for the Company to conduct its business shall be the sole responsibility of the Company. Any notifications required to be given to the City for this project or any part of it is the sole responsibility of the Company.

11. *Insurance.* Company shall provide insurance coverage on the City's property during the term of this Agreement, naming the City of Bessemer, Alabama as an additional insured. A comprehensive liability and property damage policy must be in effect with limits no less than \$1,000,000.00 per claim/\$2,000,000.00 aggregate. Company shall provide a certificate of insurance from the insurance carrier to the City prior to start of term of agreement. The Company shall be responsible for providing for its employees worker's compensation insurance as applicable under the laws of the State of Alabama.

12. *No Representations or Promises for Use.* City affirms that neither it nor anyone acting for it gave or agreed to give anything of value to any member of the production staff, any associated with the Production, or any representative of Company, except the use of the Premises, to induce Company to use the Premises in connection with the Production.

13. *Indemnification.* The Company shall indemnify the City from any damages or liability arising from injury to or death of any third party and for any damages to or destruction of property occurring during the Company's use of the Premises caused by the actions of the Company or any of its agents, contractors, employees or attendees. Specifically, Company agrees to indemnify, defend and hold harmless City and its respective officers, directors, members, employees, agents, representatives and affiliates from and against all claims, suits, obligations, liabilities, actual damages and expenses, including, without limitation, reasonable attorneys' fees, based upon, arising out of or resulting from any liability, injury, or loss that City suffers in connection with the negligence or willful misconduct of Company in performance of Company's obligations under this Agreement. Without waiving the City's sovereign or statutory immunity as provided under Alabama law including, but not limited to, defenses available under Ala. Code §§ 11-93-2; § 11-47-23; §11-47-190; § 11-47-191; and § 11-47-192 Code of Alabama, the City shall indemnify Company for any liabilities, damages, costs and claims arising from or relating to the wanton acts or omissions of the City committed in connection with this Agreement. This indemnification is limited to any insurance coverage applicable to City's wanton acts or omissions committed in connection with this Agreement. Such liability arises out of acts for which any defense of governmental,

statutory, or common law immunity is not available. The indemnification provided for herein shall not be construed as a waiver of any applicable defense of governmental, statutory, or common law immunity, and shall not prevent the City from asserting any defense of such immunity, provided that if a court of competent jurisdiction (Circuit Court of the Bessemer Division of Jefferson County, Alabama) determines that no such immunity applies, then the indemnity provided for herein shall apply.

14. *Injunctive Relief not available.* Owner's sole remedy for any breach or alleged breach by Producer shall be an action at law to recover such damages as may have been actually suffered by Owner as a result thereof (if any). Owner shall not have the right to terminate or rescind this Agreement. In no event shall Owner seek or be entitled to injunctive or other equitable relief by reason of any breach or threatened breach of this Agreement, or for any other reason pertaining hereto, nor shall Owner be entitled to seek to enjoin or restrain the exhibition, distribution, advertising or exploitation of the Picture.

15. *Law and Venue.* This agreement is subject to the laws of the State of Alabama in the jurisdiction of the Circuit Court of Jefferson County (Bessemer Division). Any and all legal matters that may arise in regard to the execution of this agreement shall be brought before the court of law in the county of Jefferson (Bessemer Division) in the State of Alabama.

16. *Miscellaneous.*

- a. *Severability.* Except as may be expressly provided to the contrary herein, each provision of this Agreement shall be considered separate and divisible, and in the event that any such provision is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall continue to be in full force and effect without being impaired or invalidated in any way.
- b. *No obligation.* Nothing herein contained shall in any way obligate Company to use City's services here under, to include the Premises in the Production or to develop, produce, exhibit, advertise, distribute or otherwise exploit the Production.
- c. *Compensation for Use of Premises Only.* Both parties agree that compensation from Company will be had solely for use of the premises as provided herein and that City is not entitled to any other compensation from revenue generated from or on behalf of said Production.
- d. *Owner/Agent.* The undersigned warrants that he/she is the owner or agent for the Premises, that he/she is fully authorized to enter into this Agreement and that he/she has the right to grant to the Company the use of the Premises and all of the rights granted in this Agreement.
- e. *Company/Agent.* The undersigned warrants that he/she is authorized to enter into this Agreement.
- f. *Remedies.* If any provision of this Agreement results in nonperformance or breach of a duty as established herein, neither party shall be prohibited or limited from pursuing any remedies as provided by law.
- g. *Binding Effect.* This Agreement, and all rights and obligations here under, shall be binding on and inure to the benefit of the parties hereto and their respective heirs, successors, licensees and assigns.

17. *Entire Agreement.* This is the entire agreement. No other authorization is necessary to enable the Company to use the Premises for the purposes contemplated herein. It will be carried out as governed by the laws of Bessemer, Alabama.

Section 3. Pursuant to the authority granted by Section 11-47-21 of the Code of Alabama of 1975, the Mayor of the City of Bessemer, Alabama, is hereby directed to execute the Location Agreements, attached hereto as Exhibit "A" and Exhibit "B" and incorporated herein, in the name of the City of Bessemer, Alabama.

Section 4. This Ordinance shall become effective immediately upon its adoption and publication as required by law.

ADOPTED this the 22nd day of January, 2018.

Councilor Thigpen made a motion to adjourn the meeting. Councilor Porter seconded the motion and it carried.

There being no further business, the meeting was adjourned.

**Wanda D. Taylor
City Clerk
City of Bessemer**

Presiding Officer
