

CITY COUNCIL
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City of Hogansville



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400 E Main St
Hogansville GA 30230-1196
706-637-8629 | cityofhogansville.org

COUNCIL ACTION FORM

MEETING DATE: September 4, 2018 **SUBMITTED BY:** City Manager

AGENDA TITLE: Proposed Location Agreement

CLASSIFICATION (City Attorney must approve all ordinances, resolutions and contracts as to form)

- | | | | |
|---|--|--|---|
| <input type="checkbox"/> Ordinance (No. _____) | <input checked="" type="checkbox"/> Contract | <input type="checkbox"/> Information Only | <input type="checkbox"/> Public Hearing |
| <input type="checkbox"/> Resolution (No. _____) | <input type="checkbox"/> Ceremonial | <input type="checkbox"/> Discussion/Action | <input type="checkbox"/> Other |

BACKGROUND (Includes description, background, and justification)

Stalwart Films, LLC has proposed to film in historic downtown Hogansville on September 4, 2018 through September 7, 2018. The attached agreement is modeled after their relationship with the City of Griffin where they film regularly.

BUDGETING & FINANCIAL IMPACT (Includes project costs and funding sources)

Griffin has a fee structure for low- and high-impact work; Stalwart Films also has a master agreement in place for filming on city property that is \$1,000 per day and \$500 for prep/wrap days. The attached Location Agreement is also used in Griffin and is revised depending on the property used and amount of days. Since prices fluctuate depending on the usage, city fees, timeframe etc. The City Manager obtained from Griffin typical fees for what Stalwart Films is requesting based on their visit to Hogansville and negotiated a fee of \$4,500 (the numbers in parenthesis below is what Stalwart Films expect they will need during their visit). In addition to the negotiated fees, Stalwart Films incurs a fee from GDOT for its road closure, they pay businesses based on impact/usage individually, and they put off-duty police officers on their payroll at \$35/hour. The City will also invoice Stalwart Films for the use of patrol cars at \$10/hour.

Permit fee/impact fee per day (2)- \$250	Prep/Strike days (3)- \$500 per day
Filming per day (1)- \$1,000	Parking lots per day (2)- \$250

STAFF RECOMMENDATION (Include possible options for consideration)

Authorization to execute the Location Agreement

LOCATION AGREEMENT

1. The undersigned owner or agent, whichever is applicable, as lessor ("Lessor"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby irrevocably grants to Stalwart Films, LLC, as lessee ("Producer"), the use of both the real and personal property located at the premises generally described as follows: **City of Hogansville: 400 E Main Street Hogansville, GA 30230** (the "Premises"), together with access to and egress from the Premises with its personnel and equipment, for the purposes of erecting, maintaining and removing temporary sets and structures, and of photographing and filming the Premises, including any and all portions thereof (including, without limitation, the interior and exterior designs of the Premises, sets, structures and furniture items) and/or recording sound for such scenes as Producer may desire in connection with Producer's project currently referred to as "The Walking Dead" (the "Program").

2. Producer shall have the right to photograph, record and use in any manner whatsoever any name connected with the Premises and any names, insignias and signs located thereon and any logos, trademarks, service marks, trade dress and verbiage contained on such signs in connection with or as part of the Program and the right to refer to the Premises by any real or fictitious name and the right to attribute any real or fictitious events as having occurred on the Premises. Producer shall have the right to reproduce, exhibit, advertise, and exploit and license others to reproduce, exhibit, advertise, and exploit all of the photographs and recordings made hereunder in connection with the Program or any episode thereof, in any and all media, versions and forms, now known and hereafter devised, throughout the universe, in all languages, in perpetuity, and in any ancillary exploitation thereof, including, without limitation, publications, soundtracks and merchandising, studio tours, theme parks, and in connection with publicity and advertising of and for the Program, any episode(s) thereof, and any telecaster or other exhibitor of the Program, and including, without limitation, the right to use or authorize the use of any portion(s) of the Program containing the photographs and recordings made hereunder in other motion pictures. Producer shall have the right, in its sole discretion, to alter or edit the photographs and recordings of the Premises (and any names, insignias and signs located thereon and any logos, trademarks, service marks, trade dress and verbiage contained on such signs) for use in the Program.

3. Lessor represents and warrants that Lessor is the sole owner or the agent for the owner of the Premises, that Lessor is fully authorized to enter into this location agreement ("Location Agreement"), that Lessor has the right to grant Producer the right to use the Premises and each and all of the rights granted herein and that no further permission or consent of any other person or entity is necessary for Lessor to grant Producer the rights granted herein.

4. Producer may take possession of the Premises on or about **Tuesday, September 4, 2018** ("Commencement Date") and may continue in possession until the completion of all photographing, recording, and wrap for which Producer may desire the use of the Premises, estimated to require approximately (4) days of occupancy. In the event that Producer's use of the Premises is prevented or hampered by weather or occurrences beyond Producer's control, Producer shall have the right to re-schedule the occupancy days without paying any additional fees. The parties also agree that Producer may take possession of the Premises during filming of the Program on one or multiple occasions for retakes, added, or new scenes on other dates and times which will be mutually determined by the parties hereto and all recordings on such dates and times shall be included within the terms of this Location Agreement. Lessor agrees to assist Producer in making such schedule in good faith and in a reasonable manner and not so as to frustrate the purposes or renegotiate any of the terms and conditions of this Location Agreement or to impede, hinder, or delay in any manner whatsoever production, exhibition, distribution or exploitation of the Program or the advertising, promotion or publicity thereof. The parties hereto further agree that the rental fees for the Premises on such future dates will be as follows: (a) if such future dates occur within twelve (12) months from the Commencement Date, Producer shall pay Lessor the same fees specified in Paragraph 5 below; (b) if such future dates occur more than twelve (12) months from the Commencement Date, Producer shall pay Lessor the fees specified in Paragraph 5 below increased by five percent (5%). Notwithstanding the foregoing, if the Premises are not utilized for the full period of time provided for in this paragraph, then Producer will pay Lessor only a proportionate amount of the applicable rental fee for the Premises on such future dates.

5. Producer agrees to pay as rental for the Premises **four thousand-five hundred** dollars (\$4500) total. All charges will be payable promptly following completion of the work contemplated hereunder, unless specifically agreed in writing to the contrary. Producer may at any time elect not to use the Premises by giving Lessor written notice of such election, in which case neither party will have any obligation to the other hereunder.

6. Producer will leave the Premises in substantially as good condition as when received by it, excepting reasonable wear and tear for the use of the Premises for the purposes herein permitted, and Producer will remove all of its sets,

structures and other material and equipment from the Premises. Producer will indemnify and hold Lessor harmless from and against any liabilities, losses, claims, demands, costs (including without limitation reasonable attorneys' fees) and expenses arising in connection with (a) any breach or alleged breach by Producer of this Location Agreement or of any of Producer's representations or warranties contained herein; or (b) any act or omission of Producer or of Producer's agents and employees in connection with Producer's use of the Premises. Lessor will indemnify and hold harmless Producer and all parent, sister and related entities of Producer, all licensees, successors, assigns of Producer, all distributors, exhibitors, stations, sponsors and advertising agencies of the Program or other program incorporating any audio and video recordings taken on or of the Premises, and all of the officers, directors, agents, employees and shareholders of each of the foregoing from and against any liabilities, losses, claims, demands, costs (including without limitation reasonable attorneys' fees) and expenses arising in connection with any act or omission of Lessor's employee, agents, and contractors and/or any breach or alleged breach by Lessor of this Location Agreement or of any of Lessor's representations or warranties contained herein.

7. Lessor acknowledges that, in the event of a breach of this Location Agreement by Producer or any third party, the damage, if any, caused Lessor thereby will not be irreparable or otherwise sufficient to entitle Lessor to seek or obtain injunctive or other equitable relief. Lessor acknowledges that Lessor's rights and remedies in any such event will be strictly limited to the right, if any, to recover compensatory monetary (but not punitive or consequential) damages in an action at law, and Lessor will not have the right to rescind or terminate this Location Agreement or any of Producer's rights hereunder, nor the right to enjoin the production, exhibition or other exploitation of the Program or any other television program, motion picture or other production, or any subsidiary or allied rights with respect thereto, nor will Lessor have the right to terminate Lessor's services or obligations hereunder by reason of such breach.

8. Lessor hereby grants Producer the right to construct duplications of the Premises, including without limitation any names, insignias and signs located thereon and any logos, trademarks, service marks, trade dress and verbiage contained on such signs at or on the Premises (the "Duplicates") and to use the Duplicates and all photographs and sound recordings made hereunder in any manner or in merchandising or filming, and to exhibit the Duplicates and all photographs and sound recordings made hereunder in any and all media, versions and forms, now known and hereafter devised, throughout the universe, in all languages, in perpetuity, including theme parks, studio tours, all promotion, advertising and publicity for Producer, its designees and licensees, and any other companies in any manner affiliated with Producer. Lessor further agrees to cooperate fully with Producer in connection with Lessor's grant of rights contained herein.

9. All rights of every kind in and to all photographs and sound recordings made hereunder and the Duplicates shall be owned by Producer and its licensees, successors, and assigns, and neither Lessor nor any other party now or hereafter having an interest in the Premises shall have any right of action against Producer or any other party arising out of, or in connection with, any use of said photographs or sound recordings or the Duplicates. Lessor releases Producer and all parent, sister and related entities of Producer, all licensees, successors, assigns of Producer, all distributors, exhibitors, stations, sponsors and advertising agencies of the Program or other program incorporating any audio and video recordings taken on or of the Premises, and all of the officers, directors, agents, employees and shareholders of each of the foregoing from any and all claims, demands and costs arising from or related to any of the use of the recordings made on the Premises as contemplated herein, including, without limitation, claims for trade libel, defamation, invasion of privacy, copyright infringement, and trademark infringement and/or dilution. Neither Producer nor its licensees, successors and assigns will be obligated to make any actual use of any photography, recordings, depictions or other references to the premises hereunder in the Program or any other television program, motion picture or otherwise.

10. Producer shall have the right to sublicense and/or assign all or a portion of its rights and obligations hereunder without the consent of Lessor or any other party.

11. Except as otherwise authorized by Producer and/or the telecaster or other exhibitor of the Program, Lessor shall not (and shall not authorize others to) publicize, advertise or promote the appearance of the Premises in the Program. Lessor acknowledges and understands the valuable and proprietary nature of the Program and any information Lessor obtains or learns as a result of Producer's use of and filming the Premises, including but not limited to information and photographs regarding the Producer, the Program participants, the set, storylines, and methods of production shall be considered "Confidential Material". Lessor further acknowledges that Lessor may not disclose such Confidential Material to any third parties by any means, including via social media outlets such as Facebook and Twitter, unless such information is already in the public domain or is required by law. Further, Lessor shall not use any name, logo, Program title, trademark or other proprietary mark of Producer or of its licensees or assigns in any manner. Lessor agrees that any violation of the foregoing provisions shall constitute and be treated as a material breach of this Location Agreement, which will cause irreparable harm to Producer and/or the telecaster or other exhibitor of the Program entitling Producer to seek or obtain injunctive and

other equitable relief (without posting bond) to prevent and/or cure any breach or threatened breach of this paragraph by Lessor.

12. Lessor will duly execute and deliver (or procure the due execution and delivery to Producer) any additional documents which Producer may reasonably require to evidence its rights. Lessor hereby appoints Producer, or its nominee, as Lessor's irrevocable attorney-in-fact, with the right but not the obligation, to prepare or complete any such documents and to execute the same in my name, or obtain execution thereof by others.

13. This Location Agreement shall be governed by the laws of the State of Georgia. This Location Agreement will inure to the benefit of and will be binding upon the parties' respective affiliates, successors, licensees, assigns, heirs and representatives. This Location Agreement constitutes the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and cannot be amended except by a written instrument signed by the parties hereto. If any provision of this Location Agreement is adjudged to be void or unenforceable, same shall not affect the validity of this Location Agreement or of any other provision hereof. Lessor gives to Producer the foregoing grant of rights, consent and authority with the full knowledge and understanding that Producer will incur substantial expense in reliance thereon. In addition to any of its other rights or remedies allowed by law or equity pursuant hereto or otherwise, including, without limitation, consequential damages, Producer will be entitled to seek injunctive relief in the event of any breach of Lessor of its representations, warranties and agreements hereunder.

ACCEPTED AND AGREED TO:

Lessor (print name)

STALWART FILMS, LLC ("Producer")

By: _____

By: _____

Its: _____

Its: _____

Dated: _____

Dated: _____

Address: _____

Address: _____